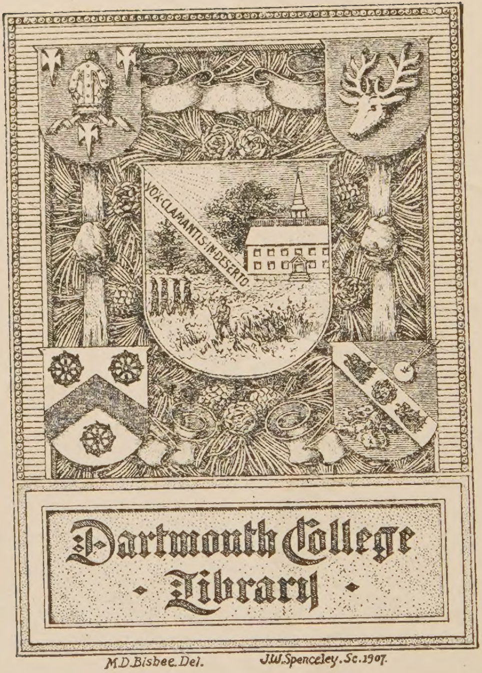

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THE LAW

RELATING TO

TRADING WITH THE ENEMY

TOGETHER WITH A CONSIDERATION OF THE

CIVIL RIGHTS AND DISABILITIES

OF

ALIEN ENEMIES

AND OF THE

EFFECT OF WAR ON CONTRACTS WITH ALIEN ENEMIES

BY

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NEW YORK
BAKER, VOORHIS & COMPANY
1918

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PREFACE

The present work is primarily a commentary on the Act of Congress of October 6, 1917, known as the Trading with the Enemy Act. This Act was not passed until six months after the declaration of a state of war with the German Empire and, therefore, transactions during this period are governed by the common law. Furthermore, the Act provides that the common law shall govern in all matters not within the scope of the enactment, and leaves the important topics of the effect of war on contracts, enemy litigants, the suspension of statutes of limitation, interest on debts due to enemies, the status of resident enemy subjects, of interned enemies, and of prisoners of war, devises and bequests by and to enemies, the rights of enemy heirs and next-of-kin, and many other topics to be determined almost entirely by the common law or by State laws in force at the outbreak of the war. It is, consequently, of paramount importance to consider the common-law provisions and the State statutes relating to these topics.

While the purely administrative questions arising under the Act of Congress will probably receive their final determination during or shortly after the war, the questions as to the effect of the Act of Congress or of the common-law provisions on private rights will occupy the attention of the bench and bar for many decades after the conclusion of peace. A study of the cases arising out of the Civil War will show that while most of the cases on these points were decided in the period between 1865 and 1885, the leading case on the effect of war on the relation of principal and agent was not decided by the Supreme Court of the United States until 1898.

The Act of Congress is based on the British enactments passed during the present war, and consequently it has been deemed necessary to consider fully the decisions of the English, Scotch, Irish, Canadian, Australian, South African and Indian courts interpreting the common law and the provisions of the British Acts.

The principal enactments of the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, and the Union of South Africa are reprinted in the Appendix, where the Executive Order of the President of October 12, 1917, may also be found.

The consideration of the topics of the law relating to the rights and disabilities of alien enemies, and the effect of war on contracts, in the form of a commentary to the sections of a legislative act, is of necessity done somewhat at the expense of a logical order of treatment. In view of the fact that a large number of the cases discussed are not readily accessible, except in the larger law libraries, the views of the courts have in many cases been given by reprinting large portions of the opinions.

A study of the decisions of the English and American courts during the present war as well as during former wars reveals the high sense of justice permeating the tribunals of these countries in the administration of the law, unaffected by any other considerations. The duties of courts in cases involving the rights of alien enemies are thus quaintly but admirably stated by a learned Chancellor of Virginia, himself one of the most ardent patriots of the Revolutionary War: "A judge should not be susceptible of national antipathy, more than of malice towards individuals—whilst executing his office, he should be not more affected by patriotic considerations, than an insulated subject is affected by the electric fluid in the circumjacent mass, whilst their communication is interrupted. What is just in this hall is just in Westminster Hall, and in every other prætorium upon earth." Wythe, C., in Page *v.* Pendleton (1793), Wythe's Va. Rep. 211.

The same thought has been expressed (in his opinion in The Möwe, 1915, P. 1) by the present President of the English High Court of Probate, Admiralty and Divorce, Sir Samuel Evans, who may justly be called the Lord Stowell of the Twentieth Century: "When a sea of passions rises and rages as a natural result of such a calamitous series of wars as the present, it behooves a Court of Justice to preserve a calm and equable attitude in all controversies which come before it for decision, not only where they concern neutrals, but also where they may affect enemy subjects. In times of peace the Admiralty Courts of this Realm are appealed to by people of all nationalities who engage in commerce upon the seas, with a confidence that right will be done. So, in the unhappy and dire times of war, the Court of Prize as a Court of Justice will, it is hoped, show that it holds evenly the scales between friend, neutral, and foe."

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45 Broadway,
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February 1, 1918.

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BIBLIOGRAPHY

Baty, Thomas, and Morgan, J. H.
War; its Conduct and Legal Results. London, 1915.

Bentwich, Norman.
Law of Private Property in War. London, 1907.

Campbell, Henry.
Law of War and Contract. Bombay, 1917.
Law of Trading with the Enemy in India. Bombay, 1916.

Castle, Edward James.
Law of Commerce in Time of War. London, 1870.

Latifi, Almá.
Effect of War on Property. London, 1909.

Page, Arthur.
War and Alien Enemies. 2d ed. London, 1915.

Phillipson, Coleman.
Effect of War on Contracts. London, 1909.

Schuster, Ernest J.
Effect of War and Moratorium on Commercial Transactions. 2d ed. London, 1915.

Scott, Leslie.
Trading with the Enemy; the Effect of War on Contracts. 2d ed. London, 1914.

Trotter, William Finlayson.
Law of Contract during War. London, 1914. (Cited: Trotter.)
Supplement to above. London, 1915. (Cited: Trotter, Supp.)

INTRODUCTION

The full significance of economic measures as a means of offense and defense was but slowly recognized by the present belligerents, and out of a necessary regard to the far-reaching effect of such measures on national and international commerce, and to possible diplomatic complications, these measures were even more slowly put into operation. But gradually these measures have become of supreme importance.

During the early period of the war, the measures were largely confined to extensions of the lists of contraband and prohibitions of imports and exports, all made primarily with a view to military aims, but, subsidiarily at least, also directed to the exercise of economic pressure on the enemy. The first important step was the adoption by Great Britain and France of the so-called "blockade" orders of March, 1915. For a consideration of the provisions of these orders, see Huberich, The Anglo-French Declaration, in 80 Central Law Journal, 417.

Great Britain and France early enacted legislation directed against trading with the enemy, but it was not until after the Paris Economic Conference of June 14–17, 1916, that a co-ordinated effort along the lines of this legislation was attempted by the Allied Powers. The Paris Conference recommended the adoption of uniform lists of contraband and of prohibited exports, and the supervision of exports to neutral countries, where there was a probability of re-exportation to enemy countries. Such supervision was to be exercised by organizations created for the purpose. Upon the special topic of trading with the enemy, the Conference recommended the adoption of measures prohibiting the subjects and citizens and all persons resident within the country from carrying on trade with: (1) persons resident within enemy countries, regardless of their nationality; (2) enemy subjects wherever resident; and (3) persons, firms and corporations whose business was entirely or partly controlled by enemy subjects or subject to enemy influence, whose names were to be set forth in a list published by the respective governments. The importation of all goods, the products of enemy countries, was to be prohibited, and the respective countries were to adopt measures whereby contracts entered into with enemy subjects should be capable of being annulled, wherever such contracts were detrimental to national interests. Business undertakings belonging to or under the control of enemy subjects, were to be sequestrated or placed under control, and measures were to be taken for the liquidation of certain of these undertakings, and the assets realized were to be sequestrated or be placed under control.

In carrying out the recommendations of the Conference, further legislation was adopted by all of the principal Allied Powers. The last country to adopt measures of this kind was Japan, by an Imperial Ordinance of April 23, 1917. The United States in the Act of Congress of October 6, 1917, followed closely the English legislation, but adopted far less rigorous provisions than Great Britain, and did not adopt in full measure the recommendations of the Paris Conference. Thus, while the American Act prohibits trading with all persons resident within enemy territory, it does not prohibit trading with enemy subjects not resident in enemy territory, nor place any restriction on the trade of non-resident citizens. Nor does the American Act provide for the liquidation of undertakings under enemy control.

In the Central Powers local conditions dictated a different policy. The comparatively small amount of foreign investments in the German Empire precluded the adoption of measures in regard to enemy property, which would entitle the Allied Powers to adopt measures of retaliation. Consequently, the German legislation on questions regarding the property of enemies was adopted only for the purpose of counteracting measures of the opposing belligerents. The legislative policy of Austria-Hungary is practically identical with that of the German Empire. In Turkey, with a large foreign-held debt and large foreign, and now enemy, investments within the country, the legislation was immmediately directed against the payment of interest on public and private debts and dividends to enemy creditors.

Theories as to the effect of war on the private citizen of an enemy state.

The alien enemy was originally conceded no rights. "'All that is taken from the enemy becomes ours,' declares the Roman jurist Gaius. The enemy himself, his wife, and children, all human beings captured alive, all houses, lands, and movables formed, in Roman law, the prey of the captors. Movables belonged either to the individual soldier capturing them, or were divided as spoil among his fellow soldiers. Immovables taken in war did not go, in Roman law, to the actual captors but were always reserved for the Roman State and formed part of the domain of public lands." 2 Sherman, Roman Law in the Modern World, section 634, citing Gaius, 2, 69, Dig. 41, 1, 51, 1, Dig. 49, 14, 31, Dig. 49, 15, 20, 1.

These views were only slightly modified during the period preceding the Napoleonic era. Grotius still regards pillage and the taking of all private property of the enemy as legal, but the close of the eighteenth century shows a decided amelioration in the laws of war.

The French Revolution heralds and ushers in the democratic age in Europe (Bentwich, War and Private Property, 13) and with it the new view, first formulated by Rousseau

(Social Contract, Book I, c. 4), that war is a relation of state to state and not of individual to individual; the individuals are enemies only by accident, and not as men, and not even as citizens but as soldiers. "La guerre n'est point une relation d'homme à homme, mais une relation d'État à État, dans laquelle les particuliers ne sont ennemis qu'accidentellement, non point comme hommes ni même comme citoyens, mais comme soldats; non point comme membres de la patrie, mais comme ses défenseurs." Almost the same language was employed by Portalis in his speech at the opening of the French Prize Court on 11 floréal, year VIII (1801), and by Talleyrand (Moniteur universel, December 5, 1806).

This was a complete repudiation of the view theretofore well established that war against a state necessarily implies war against every individual subject of such state—the right "courir sus aux ennemis," to destroy the enemy subjects and to confiscate their property, formulated by Grotius (De jure belli et pacis, III, 3, 9): "Indictum autem bellum ei qui imperium in populo summum habet, simul indictum censetur omnibus ejus non subditis tantum, sed et qui se socios adjuncturi sunt, ut qui accessio sint ipsius." Phillipson, Effect of War on Contracts, 28, 29.

The view of Rousseau was rapidly adopted by writers on international law, especially on the Continent of Europe. Cp. Massé, Droit commercial, I, 121. It finds expression in some of the treaties of the first half of the nineteenth century providing against confiscation of enemy property and the protection of enemy persons within the jurisdiction.

This view is reflected in a decision of the German Imperial Supreme Court, rendered during the present war (October 26, 1914, 85 Decisions of Supreme Court in Civil Cases, 374): "German international law does not adopt the views of certain foreign systems of law, that a war is to be conducted so as to produce the greatest possible economic loss to the subjects of the enemy state, and that these subjects therefore, are in a large measure to be deprived of the benefits of the general law governing civil rights. On the contrary, it adopts the principle that war is waged only against the enemy state as such, and against its armed forces, and that the subjects of the enemy state as regards civil rights are in the same legal position as before the war, except in so far as legislation may create exceptions. This principle does not preclude the adoption of special laws, as has been frequently done during the present war, especially by way of retaliation, prescribing a different treatment of enemy subjects."

Speaking of Rousseau's theory, Pearce Higgins, War and the Private Citizen, 12–14, says: "Rousseau's doctrine has never been accepted by British and American writers, and the history of all modern wars affords overwhelming evidence of its falsity. As it stands, the doctrine of Rousseau is an endeavor to distinguish individuals from the state which they compose, and to treat the state as something separate and apart from them. . . . The phrase, however, contains an element of truth, which has been the vital spark within it. It is a striking way of drawing attention to the fact that in modern times increased emphasis has been laid on the distinction between the combatant and non-combatant portions of the belligerent states. The saying of Rousseau is true only to this extent, that private citizens who refrain both in word and deed from taking part in hostilities will, with some important exceptions, now be left unmolested as regards their persons, and their lives and honor will be respected by the belligerent forces. . . . The instructions for the Government of the armies of the United States in the Field contain the truer view of war. 'Public war is a state of armed hostility between sovereign nations or governments. It is a law and requisite of civil existence that men live in political, continuous societies, forming organized units, called States, or nations, whose constituents bear, enjoy and suffer, advance and retrograde together, in peace and in war' (Art. 20). The 'Instructions' then go on to point out that the citizen of a hostile country is an enemy as one of the constituents of the hostile state, and as such is subjected to the hardships of war." The rejection of Rousseau's theory does not mean the unqualified application of the doctrine: Omnia licere in bello quae necessaria sunt ad finem belli.

The principle of the English and American law is expressed in the maxim: Inimici nostræ civitatis sunt inimici nostri. This view finds its extreme expression in the acts of several of the American States during the Revolutionary War, confiscating the property of British subjects, and in the Act of the Confederate Congress of August, 1861, confiscating the property of non-resident alien enemies.

It is thus set forth in the opinion of Johnson, J., in The Rapid (1814), 8 Cr. 155, 3 L. ed. 520: "In the state of war, nation is known to nation only by their armed exterior; each threatening the other with conquest or annihilation. The individuals who compose the belligerent states exist, as to each other, in a state of utter occlusion. If they meet, it is only in combat. War strips man of his social nature; it demands of him the suppression of those sympathies which claim man for a brother; . . . The universal sense of nations has acknowledged the demoralizing effects that would result from the admission of individual intercourse. The whole nation are embarked in one common bottom, and must be reconciled to submit to one common fate. Every individual of the one nation must acknowledge every individual of the other nation as his own enemy—because the enemy of his country."

The same view is expressed by Justice Isaacs of the Australian High Court, in a late case: "We have to start with the fundamental truth that war means hostility between nations, and nations are to-day regarded from the standpoint of territoriality. With us, the Sovereign has the prerogative of declaring war and making peace. When he declares war, the whole nation is at war, and in a state of hostility to the whole of the opposing nation considered territorially." Moss and Phillips *v.* Donohoe (High Court, 1915), 20 Com. L. R. 580.

But in practice the harshness of this abstract rule is considerably modified, and the modern Anglo-American view is well stated by Coleman Phillipson in his edition of Wheaton, International Law (1916): "War is primarily a relation between States and Governments, represented in the conflict by definite military and naval forces; it is only secondarily a relation between the respective subjects individually. Peaceable and inoffensive inhabitants taking no part in the contest should be immune from attack. Neither person nor property should be injured or damaged, if the legitimate purpose of the belligerent is not thereby clearly promoted, and the overcoming of his enemy not facilitated."

The same view is announced in a late American case: "The President has very carefully distinguished between the German government and the German people, and the sins of that government ought not to be visited upon the people except so far as the legitimate interests of the United States require." Lane, V. C., in Posselt *v.* D'Espard (N. J., 1917), 100 Atl. 893.

It is submitted that the final result is the same under either theory—the difference lies in the point of departure.

Views of jurists as to legality of trading with the enemy.

As early as the sixteenth and seventeenth centuries, two opposing views prevailed as to the legality of trading with the enemy, and were given practical application, particularly in the wars between Spain and the Netherlands. According to one view, a complete prohibition of trading arises by reason of the existence of a state of war. According to the other view, no prohibition arises until provided for by some form of legislative act.

Grotius (1583–1645), De jure belli et pacis, III, c. 22, holds that private contracts with the enemy touching private actions and things are unlawful and controlled by the superior duty which the citizen owes to his own state.

In 1737, Bynkershoek (1673–1743), Quæstiones juris publici, 1, c. 3, declared "that from the nature of the war itself, all commercial intercourse ceases between enemies. For what purpose would trade be carried on, if, as is clearly the case, the goods of enemies brought into our country, are liable to confiscation?"

Pufendorf (1632–1694), De jure naturæ et gentium, VIII, c. 7, section 14, and Vattel (1714–1767), Droit des gens, III, c. 16, section 264, also appear to limit the right of trade to cases of necessity.

Heineccius (1681–1741), Opera omnia, II, Pt. 2, 98, declares that all commerce ceases as of course with the enemy. "Nor can it truly be permitted that we should enter into negotiations with those with whom we are at war, since there can be no safe intercourse between each other, and we hazard personal captivity and confiscation of property, in the very attempt."

Chancellor Kent in Griswold *v.* Waddington (1819), 16 John. (N. Y.) 438, reviews all of the old international law authorities, and declares that "we see that the highest authorities on the law of nations, Grotius, Pufendorf, Burlamaqui, Vattel, Bynkershoek, and Heineccius, and a series of more subordinate and local opinions, such as those of Bœrius, Cleirac, Valin, and Emerigon, and the maritime ordinances of Spain, France, Holland and Sweden, unitedly prove, that all private communications and commerce with an enemy in time of war, are unlawful, and that, by the mere fact and force of the declaration of war, all the subjects of the one state are placed in direct hostility to all the subjects of the other."

The entire doctrine was, however, vigorously assailed as early as the middle of the eighteenth century by De Mably, Droit public de l'Europe, II, 310, who characterizes the doctrine as "un reste de notre ancienne barbarie" and suggests that while it might be imprudent to grant the same liberality of commerce as in times of peace, the belligerents should, nevertheless, agree upon certain places where their merchants could meet for the purpose of carrying on trade.

Pinheiro-Ferreira, Cours de droit public interne et externe, II, 108, condemned the doctrine as contrary to the principle that a war is a relation between states and not between individuals, and that from an economic point of view, a rupture of commercial relations tended toward the enrichment of neutrals at the expense of the belligerents.

Bluntschli, Das moderne Völkerrecht, Art. 674, favors the view that commercial intercourse should remain uninterrupted, unless considerations of a military or political nature demand a different course. Military considerations might demand an absolute cessation of all intercourse wherever the opposing armies are in the occupation of a particular territory, and political considerations may justify a belligerent to adopt a policy of non-intercourse in order the sooner to terminate the war in its favor.

Geffcken (note to Heffter, section 123), says that to permit a continuation of commerce between the citizens of the opposing belligerents, while the governments, themselves, are in open war, would mean the adoption of conflicting policies. The citizens are bound to assist the state with every means in their power, and they may not look to their personal interests in so far as such interests are contrary to the common interest of all.

The English and American authorities such as Wildman, Castle, Phillimore, Travers-Twiss, Wheaton, Kent, Woolsey, and the later writers, adopt the common-law view of an absolute cessation of commercial intercourse as a consequence of the declaration of war.

Legislation on the Continent and in Japan.

The modern continental view, followed also in Japan, is against a prohibition of trading with the enemy. During the War of 1860 against China, both France and England authorized their citizens to trade with China; but during the Franco-Prussian War, France prohibited all commercial intercourse with the enemy. In the Chinese-Japanese War, Japan continued to trade with China and even coal was allowed to be exported. Ariga, La guerre Sino-Japonaise au point de vue du droit international, 27, 28. And during the Russo-Japanese War there was no prohibition against trading. Takahashi, International Law applied to the Russo-Japanese War, 184.

During the present war, however, there has been a complete reversal of policy, and there is now a striking similarity in the laws of the principal belligerents in regard to payments to enemy countries, the supervision or liquidation of local business undertakings, and the sequestration of enemy property. This is due, in the case of the Allied Powers to the adoption of the recommendations of the Paris Economic Conference, followed by the adoption of similar laws by the Central Powers by way of retaliation.

The principal enactments of the present war are considered below.

France.

During the present war, the first enactment relating to enemy trading was the decree of September 27, 1914, prohibiting, under pain of nullity, all contracts and transactions by any person resident in France or in the French possessions or protectorates, or by French citizens wherever resident, with any subject of the German Empire or of Austria-Hungary, wherever resident, or with any person resident within the German Empire or Austria-Hungary. The decree is retroactive and affects all transactions entered into as regards the German Empire after August 4, 1914, and as regards Austria-Hungary, after August 13, 1914. The decree further prohibits any payments to, or the performance of any contracts with persons belonging to the prohibited classes, in respect of obligations incurred before August 4, or August 13, 1914, respectively. Contracts entered into in France or in the French possessions, or entered into elsewhere by French citizens, with persons in the above designated classes prior to these dates, and remaining wholly executory, may, upon the petition of a French citizen or of the citizens of an allied or neutral state, who are parties to the contract, be annulled by the President of the Civil Court after summary proceedings. Interpreting these provisions, it has been held that the decree is not confined in its operation to commercial transactions, but affects also purely civil contracts. Penal sanctions for a violation of the decree of September 27, 1914, were imposed by a law of April 4, 1915. The provisions of these laws were extended to Bulgaria by the decree of November 7, 1915.

By a law of January 22, 1916, provision was made for a report on all property held on behalf of enemies or debts owing to such persons.

By a circular of October 8, 1914, the Decree of September 27, 1914, was extended to authorize the sequestration of property of German subjects, and this was further extended by subsequent circulars to include the property of Austrian and Hungarian subjects, with certain exceptions in favor of subjects of Alsatian, Lorrainese, Polish, or Czechic origin.

For a consideration of the various enactments, see Thery and King, Emergency Legislation of France, in 59 Sol. Jour. *passim.*

Italy.

Italy declared war against Austria-Hungary on May 23, 1915. For more than a year afterwards the relations between Italy and the German Empire were similar to those existing at the present moment (January 1, 1918) between the United States and Turkey. The diplomatic relations between Italy and the German Empire were broken off, but there was no formal declaration of war until August 27, 1916. An understanding had been reached on May 21, 1915, between Italy and the German Empire in respect of the reciprocal protection of the private rights of the subjects of each country within the territory of the other. After the Paris Conference of June, 1916, Italy withdrew from this understanding, and also gave notice of termination of the commercial treaty of December 6, 1891. But even before the actual declaration of war, the legal situation of German subjects in Italy was gradually assimilated to that of subjects of Austria-Hungary.

A decree of June 24, 1915, prohibits trading with persons of Austrian or Hungarian nationality or persons resident within Austria or Hungary, and furthermore prohibits the bringing of suits in Italian courts by these persons. All pending suits are suspended during the war and the statutes of limitation are also suspended. By a decree of April 13, 1916, provision was made for the sequestration of enemy property, the supervision of enemy business undertakings, and the prohibition of payments to enemies except at certain designated places of payment. By a decree of July 18, 1916, the decree of June 24, 1915, was extended to all persons, the subjects of, or resident within, an enemy state or ally of enemy state, or within territory in hostile military occupation. The government was furthermore empowered to extend the application of the decree of April 13, 1916, to any ally of enemy state.

These decrees were followed by two others dated August 8, and August 10, 1916, respectively. The former of these prohibits Italian nationals wherever resident, and all persons, regardless of nationality, resident within Italy or the Italian colonies, from trading with persons of enemy nationality, wherever resident, or with persons resident within enemy territory or the territory of allies of enemy, or territory in the military occupation of the enemy, or with persons of any nationality and wheresoever resident, whose names may appear on lists of persons with whom trading is prohibited, published by the Italian Government. Contracts entered into even before the promulgation of the decree or even before the declaration of war, may be annulled. The supervision, sequestration or liquidation of enemy business undertakings may be authorized by certain designated administrative officials. Finally, by a decree of September 30, 1916, all payments to persons of enemy nationality, wherever resident, are prohibited.

Russia.

Russia, by an ukase of November 15/28, 1914, prohibited payments to enemy countries, and provided that payment could be made of debts due to enemy creditors by paying in the amount at the Imperial Bank. By ukases of November 15/28, 1914, and March 16/29, 1915, a supervision of enemy business undertakings was established, and by legislation of January 11/24, March 8/21, March 18/31, March 29/April 11, and May 24/June 6, 1915, the liquidation of such undertakings was ordered, unless special taxes were paid. Special measures were taken in regard to real property holdings, leases, and rental contracts. By a decision of the Plenary Session of the First and Cassation Department of the Directive Senate, February 9/22, 1915, persons of enemy nationality, whether resident or non-resident, were declared incapable of bringing suit in the Russian courts or to appoint an attorney in this behalf. Pending suits were suspended. Alien enemies may, however, be sued, in which case the court appoints a curator to represent the defendant.

Japan.

By an Imperial ordinance of April 23, 1917, Japan has prohibited trading with the enemy. The ordinance, after defining the term "enemy countries" as including all powers which are engaged in hostile acts against the Allied Powers, and defining "enemy territory" as all the territories of enemy countries, except that part which is in the occupation of the Allied Powers, and also territory in the occupation of enemy countries, prohibits every transaction with or for the benefit of the following persons: enemy countries, natural or juridical persons belonging to enemy countries, persons domiciled or resident within enemy territory, or who carry on their principal business within enemy territory, and, finally, businesses which have been publicly notified by the Minister of Agriculture and Commerce as being under the management, either wholly or partly, of persons of enemy countries or as being under enemy control.

For a translation of the text of this ordinance and of various ministerial decrees, see De Becker, in 2 International Law Notes, 85.

German Empire and Austria-Hungary.

Prior to the outbreak of the present war, the German law contained no provisions prohibiting trade with the enemy, except in so far as such trade might come within the definition of treason. Since September, 1914, a number of laws have been enacted in Germany which tend to assimilate the German law to the law prevailing in the United States and the principal Allied countries, but even under the present state of the German law, there is no general prohibition against trading with the enemy, and contracts not involving the transmission of moneys or securities during the war are valid. Furthermore, alien enemies are not under special disabilities as parties to judicial proceedings. The law accords them a *locus standi in judicio* both as plaintiffs and defendants in the ordinary courts as well as in the prize courts, and this regardless of their place of domicile or residence.

Beginning with an ordinance of September 4, 1914, relating to the supervision of foreign business undertakings, the German Government has promulgated a long series of laws dealing with the prohibition of payments to certain enemy countries, the seizure of enemy goods in the German customs, the sequestration of enemy property, the importation and transit of goods that are products of the soil or industries of enemy states, the winding-up of enemy business undertakings, and the annulment of contracts where one of the parties is an alien enemy.

An ordinance of September 30, 1914, prohibits payments to persons domiciled or resident in Great Britain or Ireland or in the British colonies, or foreign possessions, whether such payments be in cash, bills of exchange, checks, or by assignment or otherwise, and prohibits the transmission, directly or indirectly, of funds or securities to such persons. Pecuniary obligations, whether due at the time of the going into force of the ordinance or thereafter becoming due to any person, natural or juristic, domiciled or resident in the territory mentioned, are regarded as suspended from July 31, 1914, or from any subsequent date upon which they mature. During the period of suspension no interest can be demanded, and any legal consequences resulting from non-performance of any act that may have resulted between July 31, 1914, and September 30, 1914, are not regarded as having taken place.

The ordinance affects also the assignee of an obligation, unless the assignment was made prior to July 31, 1914, or, if the assignee has his domicile or residence within the German Empire, which was made before the ordinance went into effect (September 30, 1914). A person who has paid on behalf of another and is entitled to reimbursement on this ground, is in the same position as an assignee.

A debtor may free himself from his obligation by depositing at the Reichsbank the amount or the securities involved, to the credit of the person entitled. When the time for presentment of payment or protest for non-payment of a bill of exchange had not expired on September 30, 1914, the time of presentment and protest is extended during the time the ordinance is in force, and thereafter according to any notifications that may be made by the Imperial Chancellor. These provisions also apply to checks. Additional stamp duties are not imposed.

The ordinance does not apply to obligations performable within Germany, and in favor of local branches of British firms, provided that the claim arose out of a domestic transaction. This proviso does not apply to claims, made by a German branch against local debtors, for non-acceptance or non-payment of a bill of exchange payable in a foreign country.

The penalty for violation of the ordinance is a fine not exceeding 50,000 marks, or imprisonment for three years, or both such fine and imprisonment. The attempt is punishable. The ordinance fixes a like penalty for the direct or indirect exportation from Germany or from any other country, of goods to British territory, where the exportation of such goods is prohibited under general laws or proclamations relating to exports. The Imperial Chancellor is empowered to grant licenses and to extend the operations of the ordinance to other countries at war with Germany.

The Ordinance of September 30, 1914, was subsequently extended to France, the French possessions, Russia and Finland, the British Territory of Occupation in Egypt, the territory of Morocco under French protectorate, Portugal and the Portuguese colonies, Roumania, Italy and the Italian possessions and territories in the occupation of the Italian forces, and finally, by a notification of August 9, 1917, to the United States. In the last named case, the rights of assignees are determined as of April 6, 1917.

An ordinance of November 26, 1914, provides for the compulsory administration of undertakings of which the capital belongs either wholly or partly to citizens of France, and this ordinance has been extended to British, Russian, Portuguese, Italian and Roumanian undertakings. Under the term "undertakings" is included all kinds of property, real or personal, as well as bequests and devises.

By an ordinance of July 31, 1916, provision was made for the liquidation of undertakings of the subjects of Great Britain and Ireland and the British Overseas Possessions, with the exception of Canada and the South African Union.

By an ordinance of December 16, 1916, authority is given the Imperial Chancellor, upon the petition of the German party, to declare void in whole or in part any contract entered into by a German subject, juristic person, or undertaking within Germany and a subject, juristic person, or undertaking in Great Britain and Ireland, France or Italy. Actual service by registered letter, mailed in a neutral country, of the pendency of proceedings, must be given to the enemy parties to the transaction.

All enemy property within the Empire belonging to non-resident subjects of Great Britain, France, Russia, Egypt, French Morocco, Roumania, and Italy, may be placed under sequestration, under ordinances of October 7, 1915, and subsequent dates; and under an ordinance of October 10, 1915, all enemy property of non-residents within the jurisdiction must be reported. These provisions have been extended to property owned by citizens of the United States by an ordinance of November 20, 1917.

For a further consideration of the provisions of these enactments, see Huberich and King, Emergency Legislation of Germany, in 59 Sol. Jour., *passim*; Richard King, The German Enemy Contracts Annulment Ordinance, in 2 International Law Notes, 5; Huberich, German Laws Relating to Payments to Alien Enemies, in 17 Columbia Law Review, 653; Thiesing, Trading with the Enemy, 65th Cong., 1st Sess., Sen. Doc. No. 107.

The laws of Austria and of Hungary follow closely the laws of the German Empire. The same is true of the laws enacted by Germany for the Occupied Territories of Belgium.

Turkey.

A law of November 24/December 7, 1914, prohibits payments to the subjects of enemy countries. Government obligations and the interests thereon payable to the subjects of enemy or ally of enemy states are not to be paid until after the conclusion of peace. All interest on government obligations was declared to be payable only at Constantinople, except on certain portions of the public debt payable in Germany or Austria. Affidavits of non-enemy ownership are required to be attached to any coupons presented for payment. Private companies are forbidden to pay interest or dividends to enemy creditors before the conclusion of peace, but upon the demand of the Minister of Finance the amounts due must be paid into a bank designated by the government. Private and commercial debts contracted by Turkish subjects in favor of the subjects of enemy or ally of enemy states, cease to bear interest after October 15/28, 1914.

Legislation in the British Empire.

In Great Britain the legislative policy in regard to trading with the enemy has not been uniform. One of the earliest acts of Parliament is that of 29 & 30 Car. 2, c. 1 (1677), entitled "An Act for raising money for the war against France, &c., and for prohibiting of several French commodities." This was, however, not a general prohibition of imports but related only to French wines and other specified commodities. This act was amended by the Act 1 Jac. 2, c. 6 (1685).

The Act of Parliament of 1689 (1 W. & M. c. 34), which was passed to be operative for three years was afterwards extended by the Act 4 & 5 W. & M., c. 25 (1693). These acts were directed only against the importation of certain commodities, and not until 1691 (3 & 4 W. & M. c. 13), was both the export and the import trade with France generally prohibited. The importation of French brandies, however, was permitted. During the same war, the Act 7 & 8 W. 3, c. 20 (1696), was passed granting an additional duty on all French goods and merchandise.

At the beginning of the war with France and Spain there was for some time no prohibition of commerce or trade with the enemy. The Act 1 Anne, St. 2, c. 14 (1701) provided for the payment of duty on the importation of brandies and the Act 2 & 3 Anne, c. 9 (1703) allowed commerce with France during the then existing war. The Act 3 & 4 Anne, c. 13 (1704) entitled "An Act for prohibiting all trade and commerce with France," is merely a prohibition of imports, and excepts the importations of French wines contracted for before the Act was passed. The act does not apply to Spain. The Act 3 & 4 Anne, c. 14 (1704) entitled "An Act to prevent all traitorous correspondence with her Majesty's enemies" prohibits only the exportation of arms and munitions, and also prohibits British subjects from going to or coming from France without permission.

In the declaration of war in 1756 between England and France there is a prohibition of "all correspondence or communication with the French king, or his subjects." So also the declaration of 1762 by England against Spain forbids "any correspondence and communication with the King of Spain and his subjects," and the carrying of any soldiers, arms, munitions, etc., to Spain.

During the war with the American colonies and the ensuing wars with France, Spain and Holland, no prohibitory acts were passed. Stringent measures were, however, enacted in the subsequent war with France, notably the act 33 Geo. 3, c. 27 (1793), which made the sale and exportation of munitions and provisions a treasonable act. This act also forbids British subjects from acquiring lands as purchasers or mortgagees in France, and this prohibition extended to British subjects resident outside of the realm. The act also specifically prohibited English underwriters from issuing policies of marine insurance on French ships and cargoes.

During the Crimean War there was no prohibition against trading with non-blockaded ports, and during the Boer War, the intimate commercial relations existing between Great Britain and the South African Republics, and the large amount of English capital there invested, dictated a lenient policy in regard to trade.

On August 5, 1914, a proclamation was issued relating to trading with the German Empire, which was extended to Austria-Hungary by the proclamation of August 12, 1914. The proclamation of August 5, 1914, prohibits the supplying or obtaining any goods to or from any person resident within the enemy country. The proclamation furthermore forbids the issuing of any new insurance policies and the entering into any new commercial, financial or other contract or obligation with or for the benefit of any person resident, carrying on business or being in enemy territory. In explanation of this proclamation, an official announcement was issued by the Treasury under date of August 22, 1914. In this announcement it is stated that the important thing to be considered is where the foreign trader resides and carries on business, and not the nationality of such trader, and that, consequently, there is, as a rule, no objection to British firms trading with German or Austrian firms established in neutral or British territory, nor with branches of enemy firms in such territory. Furthermore, that in regard to commercial contracts in which nothing remains to be done save to pay for goods already delivered, or for services already performed, no objection exists to the making of payment. This proclamation and the accompanying announcement were revoked by the proclamation of September 9, 1914.

Beginning with the Trading with the Enemy Proclamation No. 2 of September 9, 1914, a number of acts of Parliament have been passed and proclamations issued. The more important of these as now in force are reprinted in the Appendix.

The legislation in the British Overseas Dominions follows closely the provisions of the English acts and proclamations. In the Dominion of Canada provisions of the various enactments are now consolidated in the Orders of the Governor-General in Council of May 2, 1916, issued under the authority of the War Measures Act, 1914.

In the Union of South Africa the principal Royal proclamations relating to trading with the enemy were put in force. The law is now set forth in the Act of June 10, 1916, No. 39 of 1916. The prohibited transactions are the same as under the English act, but include taking part in any transaction or performing any act "which in accordance with the English or the Roman-Dutch common law, or by this Act, or by any other law, constitutes trading with the enemy." Another noteworthy provision is that contained in section 10, to the effect that life and endowment insurance policies by or in favor of alien enemies or subjects of enemy states shall not be avoided merely by the existence of a state of war, and the authorization to the custodian to pay premiums thereon out of funds in his hands.

In the Commonwealth of Australia, the principal act is that of October 23, 1914, No. 9 of 1914, as amended.

In the Empire of India, the principal enactments are the ordinance of October 14, 1914, No. 6 of 1914, and the act of March 22, 1915, No. 6 of 1915.

In the Dominion of New Zealand the first statutory prohibition is contained in the Regulation of Trade and Commerce Act, 1914, of August 10, 1914, No. 6 of 1914. This was supplemented by the Trading with the Enemy Act, 1914, of November 2, 1914, No. 40 of 1914. The abrogation of contracts is provided for in the Enemy Contracts Act of July 28, 1915, No. 9 of 1915. The principal Trading with the Enemy Act 1914, was amended by the Act of July 28, 1915, No. 11 of 1915.

The principal acts now in force in the Dominion of Canada, the Union of South Africa, and the Commonwealth of Australia, are reprinted in the Appendix.

Legislation in the United States.

On September 30, 1774, the Continental Congress resolved that from and after September 10, 1775, "the exportation of all merchandise and every commodity whatsoever to Great Britain, Ireland and the West Indies" should cease, unless the grievances of America were redressed before that time. 1 Am. Archives, 4th Series, 906. This was held to prohibit payments to Great Britain after September 10, 1775. Hoare *v.* Allen (1789), 2 Dall. (Pa.) 102, 1 L. ed. 307.

In June, 1778, a committee of Congress was appointed to report upon the means of preventing correspondence by letter with the enemy, and Congress recommended to the several States to take effectual measures to put a stop to such "dangerous and criminal correspondence." 4 Jour.

Cong. 254. In 1780, Congress declared that the enemy had derived great supplies of provisions from trading with the adjacent States and recommended to the several States to pass measures allowing the inflicting of capital punishment on all persons who should directly or indirectly supply the enemy with provisions or stores. 6 Jour. Cong. 163.

In 1781, Congress resolved "that the citizens and inhabitants of these United States be strictly enjoined and required to abstain from all intercourse, correspondence, or dealings whatsoever, with the subjects of Great Britain, while at open war with these United States, as they would answer the same at their peril; and the executives of the several States were called upon to take the most vigilant and effectual measures for detecting and suppressing such intercourse, correspondence, or dealings, and bringing the authors thereof, or those concerned therein, to condign punishment." 7 Jour. Cong. 60.

In June, 1782, it being found that certain of the inhabitants were "wickedly engaged in carrying on this illicit practice," it was recommended to the State legislative assemblies "to adopt the most efficacious measures for suppressing all traffic and illicit intercourse between their citizens and the enemy, and to impress on the citizens the baneful consequences apprehended by Congress, from a continuance of this illicit and infamous traffic."

Some of the States acted upon this request. Thus, New York, by Act of March 9, 1779 (Sess. 2, c. 28), declared all goods coming from a place within the power of the enemy liable to confiscation and all contracts relating to acts of this kind to be void. See also Act of April 13, 1782 (Sess. 5, c. 39).

Subsequent to the Revolutionary War, non-intercourse acts directed against France were passed. Under the acts of June 13, 1798, February 9, 1799, February 27, 1800, American owned vessels were prohibited from proceeding to French ports or from being employed in traffic or commerce with or for any person resident within the jurisdiction or under the authority of France.

The first trading with the enemy act enacted by the National government of the United States was the act of July 6, 1812 (2 Stat. L. 778). Under this act it was provided that American owned vessels before clearance should give bond not to trade with the enemy. The provisions against trading, however, were very limited in their scope. Section 2 provides that: "if any citizens of the United States, or person inhabiting the same, shall transport or attempt to transport, over land or otherwise, in any wagon, cart, sleigh, boat, or otherwise, naval or military stores, arms or the munitions of war, or any article of provision, from any place of the United States, to any place in Upper or Lower Canada, Nova Scotia, or New Brunswick, the wagon, cart, sleigh, boat, or the thing by which the said naval or military stores, arms, or munitions of war or articles of provision are transported or attempted to be transported, together with such naval or military stores, arms, or munitions of war or provisions, shall be forfeited to the use of the United States, and the person or persons aiding or privy to the same shall severally forfeit and pay to the use of the United States, a sum equal in value to the wagon, cart, sleigh, boat, or thing by which the said naval or military stores, arms, or munitions of war or articles of provision, are transported, or are attempted to be transported; and shall moreover be considered as guilty of a misdemeanor, and be liable to be fined in a sum not exceeding five hundred dollars, and imprisoned for a term not exceeding six months, in the discretion of the court: Provided, that nothing herein contained shall extend to any transportation for the use or on account of the United States or the supply of its troops or armed forces." It further authorized the President to give passports for the safe transportation of any ship or other property belonging to British subjects within the limits of the United States.

During the Civil War, Congress passed the Non-Intercourse Act of July 13, 1861 (12 Stat. L. 255). It empowered the President by proclamation to declare that the inhabitants of a State or a part thereof were to be considered in insurrection, "and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from such State or section into the other parts of the United States, and all proceeding to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section be forfeited to the United States."

On August 16, 1861 (12 Stat. L. 1263), the President issued a proclamation declaring certain states in insurrection. Congress passed an additional act on May 2, 1862 (12 Stat. L. 404), followed by the proclamation of March 31, 1863. A further act was passed July 2, 1864 (13 Stat. L. 375), followed by the proclamation of September 24, 1863 (13 Stat. L. 721).

Shortly after the outbreak of the Spanish-American War, on April 27, 1898, the Treasury Department issued certain instructions forbidding clearances of American vessels for Spanish ports, but placing no restriction on the clearances of other vessels for such enemy ports provided they did not carry contraband or coal. Thus, the clearance of a neutral ship with an American owned cargo for a Spanish port was permitted, and to this extent trading was allowed. 7 Moore, International Law Digest, section 1135.

For a history of the present Act of Congress of October 6, 1917, see *infra*, p. 33.

Development of the doctrine by the English and American courts.

The Black Book of the Admiralty, Twiss' ed., 69, contains a passage directing inquests to be had of all who trade or communicate with the enemy without a royal license. "Item, soit enquis de tous ceulx qui entrecommunent, vendent, ou achatent, avec aucuns des ennemis de nostre seigneur le roy sans licence especiale du roi, ou de son admiral."

In 13 Edw. 2, we find a case at common law in which the keepers of the truce gave license to certain men to sell and buy their goods in Scotland, which was then at war with England, and the merchants were impleaded on this act and though the license was held void, they were pardoned. 2 Roll. Abr. 173. In the Case of the Monopolies, East India Co. *v.* Sandys (1684), 7 St. R. 493, 2 Show. 366, Skinner, 132, great stress was laid in the arguments of counsel on the illegality of trading with enemies. The case itself was one relating to the validity of the exclusive monopoly granted to the East India Company to trade with the subjects of the Great Mogul, who, as infidels, were in the legal position of enemies.

But the doctrine was only slowly recognized by the courts of common law, and towards the close of the eighteenth century, Lord Mansfield in Gist *v.* Mason (1786), 1 T. R. 88, was obliged to say: "I know no cases that prohibit even a subject trading with the enemy, except two; one of which is a short note in Roll. Abr. (2 Roll. Abr. 173), where trading with Scotland, then in a general state of enmity with this kingdom, was held to be illegal, and the other was a note (which is now burned), which was given to me by Lord Hardwicke of a reference in King William's time to all the judges, whether it were a crime at common law to carry corn to the enemy in time of war; who were of opinion that it was a misdemeanor. By the maritime law, trading with an enemy is cause of confiscation in a subject, provided he is taken in the act."

Baty and Morgan, War, its Conduct and Legal Results, 349, say that "it is extremely doubtful whether such things as the making of contracts with the enemy are, at common law anything worse than mere nullities," and it has been said that there is no reported instance of a conviction at common law for trading with the enemy. Bentwich, in 9 Am. J. of Int. L. 352.

The admiralty courts, however, always maintained the doctrine of the illegality of trading with the enemy, and confiscated any property involved in such trade. For a review of the early cases in admiralty, see The Hoop (1799), 1 C. Rob. 196, 1 Roscoe P. C. 104, the argument of Sir John Nicholl in Potts *v.* Bell (1800), 8 T. R. 548, and the opinion of Chancellor Kent in Griswold *v.* Waddington (1819), 16 John. (N. Y.) 438.

Since the decision in The Hoop, *supra*, the doctrine of the admiralty courts was adopted by the courts of common law, and has become firmly established in the case law of England and America. In the struggles at the beginning of the nineteenth century "the rule against trading with the enemy was applied with very great severity; with such severity, indeed, as occasionally to defeat the true purpose of the law and to lose any rational justification. . . . It was the policy of governments then to offer every possible encouragement to privateers so as to destroy the enemy's commerce, and in order to effect this object it was regular for prize courts to press the law in favor of the captors." Bentwich, War and Private Property, 50.

During the Crimean War some relaxation in the severity of application of the rule is noticeable, and the abolition of privateering by the Declaration of Paris of 1856, took away one of the reasons for the stringency of the prohibition. The decisions rendered during the Civil War in the United

States, however, show no relaxation of the rule, except the notable decision of the Supreme Court of the United States in M'Stea *v.* Matthews (1870), 91 U. S. 7, 23 L. ed. 188, in which it was held that the prohibition against trading did not arise except under a legislative enactment.

The few decisions rendered by the English courts during the Boer War manifest a greater liberality, but must be considered in the light of the special political circumstances. As the old law was early modified and embodied in legislative enactments in the British Empire during the present war, there has been less scope for the development of the common-law principles relating to this topic.

Grounds of illegality of trading with the enemy.

Writers and judges have given various reasons for the rule of law prohibiting trade with the enemy.

Grotius (De jure belli et pacis, III, c. 22, section 5) places it on the national duty of the subject not to trade with the enemies of his country, but this is not the theory of the present English and American legislation; the English courts (Bell *v.* Reid [1813], 1 M. & S. 726, more fully discussed, *infra*), have held that a non-resident subject may trade with the enemy.

The earlier English and American view is that such trade is prohibited on account of the danger to the state of any intercourse with persons in the enemy country; the Black Book of the Admiralty directs inquest of all who trade or communicate with the enemy. This is also the view of Lord Stowell in The Hoop (1799), 1 C. Rob. 196, 1 Roscoe P. C. 104: "Who can be insensible to the consequences that might follow if every person in time of war had a right to carry on a commercial intercourse with the enemy, and under color of that had the means of carrying on any other species of intercourse he might think fit." See The Jonge Pieter (1801), 4 C. Rob. 79, where the "political danger" of such intercourse is adverted to. See also Antoine *v.* Morshead (1815), 6 Taunt. 237.

The American courts generally adopted this view. Thus, Story, J., in The Julia (1814), 8 Cr. 181, 3 L. ed. 528: "I lay it down as a fundamental proposition, that, strictly speaking, in war, all intercourse between the subjects and citizens of the belligerent countries is illegal, unless sanctioned by the authority of the government, or in the exercise of the rights of humanity. . . . The ground upon which a trading with the enemy is prohibited, is not the criminal intentions of the parties engaged in it, or the direct and immediate injury to the state. The principle is extracted from a more enlarged policy, which looks to the general interests of the nations, which may be sacrificed under the temptation of unlimited intercourse, or sold by the cupidity of corrupted avarice." This is also the basis of the decision in cases like The Rapid (1814), 8 Cr. 155, 3 L. ed. 615, where the acts held unlawful were obviously to the economic interest of the country penalizing them. See also 1 Kent's Commentaries, 67, quoted *infra*, p. 151.

The adoption of this view clearly justifies the prohibition of all forms of intercourse, even intercourse of a purely non-commercial character. See further, *infra*, p. 148. This view was rejected by some American judges in cases growing out of the War of 1812. Cp. United States *v.* Barker (1820), 1 Paine, 156, F. C. No. 14,159.

About the middle of the nineteenth century the view gains ground that the object of the prohibition against trading is the crippling of the resources of the enemy. Dana, in his edition of Wheaton, International Law, 876, n, gives this as the main reason. So also Willes, J., in Esposito *v.* Bowden (1857), 7 Ellis & B. 763: "It is now fully established that, the presumed object of war being as much to cripple the enemy's commerce as to capture his property, a declaration of war imports a prohibition of commercial intercourse and correspondence with the individuals of the enemy's country, and that such intercourse except with the license of the Crown, is illegal."

Finally, Justice Gray, in Kershaw *v.* Kelsey (1868), 100 Mass. 561, 97 Am. Dec. 124, rejecting absolutely the view that all intercourse is *per se* unlawful, declared that only such intercourse with the enemy as was "inconsistent with the state of war" was prohibited, and that this included "any act or contract which tends to increase his resources."

This was the theory of the acts of Congress during the Civil War, which prohibited only commercial intercourse, and the same is true of the present English and American legislation. It is to be noted in this connection that communications of a non-commercial character are not prohibited by the English acts and proclamations, and that the present act of Congress, while prohibiting all forms of communications, except under license, distinguishes between commercial and non-commercial intercourse, and brings only the former under the definition of "trade."

The underlying idea of the English legislation is thus given by Lord President Strathclyde of the Scotch Court of Session, in Van Uden *v.* Burrill [1916] S. C. 391: "The principle which lies at the root of this legislation—I refer to the Trading with the Enemy Acts and also to the Royal Proclamation thereanent—is public policy, which forbids the doing of acts that will be, or may be, to the advantage of the enemy state by increasing its capacity for prolonging hostilities in adding to the credit, money, or goods, or other resources available to individuals in the enemy state. . . . As was observed, in somewhat popular but even more forcible language, by the President of the Board of Trade: 'While the war is on, we ought to do everything in our power to injure and to ruin German finance. During the war we should do everything we can to destroy German credit, and to that end we should do everything in our power to cripple, cramp, squeeze, and destroy her trade.'"

Lord Stowell in The Hoop (1799), 1 C. Rob. 196, 1 Roscoe P. C. 104, gives as a subsidiary ground for the illegality of enemy trading the rule that an alien enemy has no *persona standi in judicio:* "A state in which contracts cannot be enforced cannot be a state of legal commerce. If the parties who are to contract have no right to compel the performance of the contract, nor even to appear in a court of justice for that purpose, can there be a stronger proof that the law imposes a legal inability to contract? To such transactions it gives no sanction; they have no legal existence, and the whole of such commerce is attempted without its protection and against its authority. Bynkershoek expresses himself with great force upon this argument in his first book, chapter 7, where he lays down that the legality of commerce and the mutual use of courts of justice are inseparable. He says that cases of commerce are indistinguishable from cases of any other species in this respect: Si hosti semel permittas actiones exercere, difficile est distinguere ex qua causa oriantur, nec potui animadvertere illam distinctionem unquam usu fuisse servatam." Lord Strathclyde in Van Uden *v.* Burrill [1916] S. C. 391, reverses this reasoning, and holds that an alien enemy has no *persona standi in judicio* because of the prohibition against trade.

Dr. Baty, Intercourse with Alien Enemies, in 31 Law Quarterly Review, 30, gives a learned review of the cases decided prior to the present war, and concludes, that the rule as to the invalidity of contracts with an alien enemy is derived mainly, if not entirely, from the danger and impossibility of permitting intimate intercourse between the subjects of enemy states. It is submitted, however, that the legislation and judicial decisions during the present war show that the guiding principle is the annihilation of the credit and trade of the enemy. Dr. Baty concludes: "It is further suggested that in the complex circumstances of the modern world this intimacy of intercourse, in a great majority of transactions, no longer subsists. The conclusion would appear to be that except in peculiar cases, where the interest and duty of a private individual would be brought into conflict, or where personal intercourse is still necessary, the prohibition of making and performing contracts with enemy persons is no longer, as a matter of policy, reasonable or maintainable."

Bentwich, War and Private Property, 61, assuming the reason for the prohibition to be the desire to cripple the trade of the opponent during war, comes to the same conclusion: "The basis and the purpose of the belligerent's prohibition of commerce between enemy subjects is to weaken the enemy, or at any rate to prevent his power of resistance being increased by any act of his own people. In cases where these ends are not advanced there is no reason to prohibit trading, or to annul contracts. And so delicate is the organism of modern commerce that all gratuitous interference with it should be avoided. The harm done to national prosperity by sweeping restraints on trade may far outweigh the harm done to the enemy."

The doctrine of non-intercourse is being applied to the fullest possible extent in the present war. It must be left to future determination how fully it accomplishes its purposes as a measure of war, and at what cost to national trade and prosperity after the war.

COMMENTARY ON THE TRADING WITH THE ENEMY ACT

(Approved October 6, 1917)

[Public—No. 91—65th Congress, 1st Session]

[H. R. 4960]

An Act to define, regulate, and punish Trading with the Enemy, and for other Purposes

Enacting clause.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Short title.

That this Act shall be known as the "Trading with the Enemy Act."

Legislative history of Act.

In regard to similar acts passed during the Revolutionary War, the War of 1812, and the Civil War, see Introduction.

Shortly after the declaration of a state of war with the German Empire, a committee was appointed representing the Department of State, the Department of Justice, the Treasury Department, and the Department of Commerce, and composed of the Assistant Attorney-General, Mr. Charles Warren, the Comptroller of the Currency, the Solicitor of the Department of State, Mr. Woolsey, and the then Chief of the Department of Foreign and Domestic Commerce, Dr. Edward E. Pratt. The bill as drafted by this committee was submitted to the secretaries of the four departments. During the progress of the bill before Congress the Government was chiefly represented by Assistant Attorney-General Warren.

The bill was introduced in the House of Representatives on May 25, 1917, by William C. Adamson, of Georgia, Chairman of the House Committee on Interstate and Foreign Commerce, and referred to that committee. The hearings before this committee were had on May 29, 31, and June 4, 1917. (Published in Hearings before the Committee on Interstate and Foreign Commerce—on H. R. 4704. Washington, 1917.) The bill was reported by the Committee with amendments (House Report No. 85) on June 11, 1917, and committed to the Committee of the Whole House on the State of the Union, on June 21, 1917. The debates in the House of Representatives were had principally on July 9, 10, and 11, 1917, and, after considerable amendment, the bill passed on the last named day.

On the following day the bill as adopted by the House of Representatives came before the Senate, and was referred to the Committee on Commerce, and, in turn, referred to a Sub-Committee, consisting of Senators Ransdell, Vardaman, and Fernald. Hearings before this Sub-Committee were had on July 23, 24, 25, 27, 30, and August 2 and 13, 1917. (Published in Hearings before the Sub-Committee—on H. R. 4960, Washington, 1917.) The bill, with many amendments, was reported back to the Senate on August 15, 1917, debated on September 11 and 12, 1917, and passed in an amended form on the latter date.

The bill as passed was sent to a Conference Committee, finally passed on October 3, 1917, and signed by the President on October 6, 1917.

Constitutionality.

The power of Congress to enact legislation relating to intercourse with, or the property of, alien enemies is beyond doubt. In regard to the constitutionality of the Act of July 13, 1861, relating to non-intercourse with the Confederate States, it was said that "the power of the government to impose such conditions upon commercial intercourse with an enemy in time of war as it sees fit, is undoubted. It is a power which every other government in the world claims and exercises, and which belongs to the government of the United States as incident to the power to declare war and to carry it on to a successful termination." Per Bradley, J., in Hamilton *v.* Dillin (1874), 21 Wall. 73, 22 L. ed. 528.

The measure need not be directed alone against the subjects of the enemy state; it may include neutrals or even citizens of the United States, who by their domicile or acts acquired a hostile character. The entire question is elaborately dealt with in Miller *v.* United States (1870), 11 Wall. 268, 20 L. ed. 135, involving the constitutionality of certain Civil War acts. Strong, J., delivering the opinion of the court, says: "If the statutes were not enacted under the municipal power of Congress to legislate for the punishment of crimes against the sovereignty of the

United States, if, on the contrary, they are an exercise of the war powers of the government, it is clear they are not affected by the restrictions imposed by the Fifth and Sixth Amendments. This we understand to have been conceded in the argument. The question, therefore, is, whether the action of Congress was a legitimate exercise of the war power. The Constitution confers upon Congress expressly power to declare war, grant letters of marque and reprisal, and make rules respecting captures on land and water. Upon the exercise of these powers no restrictions are imposed. Of course the power to declare war involves the power to prosecute it by all means and in any manner in which war may be legitimately prosecuted. It therefore includes the right to seize and confiscate all property of an enemy and to dispose of it at the will of the captor. This is and always has been an undoubted belligerent right. If there were any uncertainty respecting the existence of such a right it would be set at rest by the express grant of power to make rules respecting captures on land and water. It is argued that though there are no express constitutional restrictions upon the power of Congress to declare and prosecute war, or to make rules respecting captures on land and water, there are restrictions implied in the nature of the powers themselves. Hence, it is said, the power to prosecute war is only a power to prosecute it according to the law of nations, and a power to make rules respecting captures is a power to make such rules only as are within the laws of nations. Whether this is so or not we do not care to inquire, for it is not necessary to the present case. It is sufficient that the right to confiscate the property of all public enemies is a conceded right. Now, what is that right, and why is it allowed? It may be remarked that it has no reference whatever of the personal guilt of the owner of confiscated property, and the act to confiscation is not a proceeding against him. The confiscation is not because of crime, but because of the relation of the property to the opposing belligerent, a relation in which it has been brought in consequence of its ownership. It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property. [The Venus (1814), 8 Cr. 253.] In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy's country, no matter what his nationality. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which, by depriving an enemy of property within reach of his power, whether within his territory or without it, impairs his ability to resist the confiscating government, while at the same time it furnishes to that government means for carrying on the war.

Hence any property which the enemy can use, either by actual appropriation or by the exercise of control over its owner, or which the adherents of the enemy have the power of devoting to the enemy's use, is a proper subject of confiscation. . . . It is ever a presumption that inhabitants of an enemy's territory are enemies, even though they are not participants in the war, though they are subjects of neutral states, or even subjects or citizens of the government prosecuting the war against the state within which they reside. But even in foreign wars persons may be enemies who are not inhabitants of the enemy's territory. The laws of nations nowhere declare the contrary. And it would be strange if they did, for those not inhabitants of a foreign state may be more potent and dangerous foes than if they were actually residents of that state. By uniting themselves to the cause of a foreign enemy they cast in their lot with his, and they cannot be permitted to claim exemptions which the subjects of the enemy do not possess. Depriving them of their property is a blow against the hostile power quite as effective, and tending quite as directly to weaken the belligerent with whom they act, as would be confiscating the property of a non-combatant resident. Clearly, therefore, those must be considered as public enemies, and amenable to the laws of war as such, who, though subjects of a state in amity with the United States, are in the service of a state at war with them, and this not because they are inhabitants of such a state, but because of their hostile acts in the war. . . . No recognized usage of nations excludes from the category of enemies those who act with, or aid or abet and give comfort to enemies, whether foreign or domestic, though they may not be residents of enemy's territory. It is not without weight, that when the Constitution was formed its framers had fresh in view what had been done during the Revolutionary War. Similar statutes for the confiscation of property of domestic enemies, of those who adhered to the British government, though not residents of Great Britain, were enacted in many of the States, and they have been judicially determined to have been justified by the laws of war. They show what was then understood to be confiscable property, and who were public enemies. At least they show the general understanding that aiders and abettors of the public enemy were themselves enemies, and hence that their property might lawfully be confiscated. It was with these facts fresh in memory, and with a full knowledge that such legislation had been common, almost universal, that the Constitution was adopted. It did prohibit *ex post facto* laws. It did prohibit bills of attainder. They had also been passed by the States. But it imposed no restriction upon the power to prosecute war or confiscate enemy's property. It seems to be a fair inference from the omission that it was intended the government should have the power of carrying on war as it had been carried on during the Revolution, and therefore should have the right to confiscate as enemy's property, not only the property of foreign enemies, but also that of domestic, and of the aiders, abetters, and comforters of a public enemy. The framers of the Constitution guarded against excesses that had existed during the Revolutionary struggle. It is incredible that if such confiscations had not been contemplated as possible and legitimate, they would not have been expressly prohibited, or at least restricted." Field, J., dissented. Accord: Knoefel *v.* Williams (1868), 30 Ind. 1; Semple *v.* United States (1868), Chase, 259, F. C. No. 12661; Britton *v.* Butler (1872), 9 Blatchf. 456, F. C. No. 1903; cp. Norris *v.* Doniphan (1863), 4 Metc. (Ky.) 385. For a case upholding the constitutionality of the Australian trading with the enemy act, under similar constitutional provisions, see Welsbach Light Co. of Australia, Ltd. *v.* Commonwealth (High Court, 1916), 22 Com. L. R. 268; see also Rex *v.* Kidman (1915), 20 Com. L. R. 425.

The section of the Act regarding imports is sustainable under the commerce clause and the war power. Cp. The Paulina *v.* United States (1812), 7 Cr. 52, 3 L. ed. 266. The section forbidding the transportation of alien enemies is as to foreign and interstate transportation sustainable under both the commerce and the war powers of Congress; intrastate transportation may be forbidden under the war powers, and the same powers sustain the provisions regarding change of name by an enemy.

Section 19, regarding publications in a language other than English, relates to matters entirely foreign to the scope of the Act. In so far as this section prohibits printing, publishing, or circulating by means other than the post, it can be sustained only under the war powers. Where such publication is circulated through the mails or transported to another State or to a foreign country, the powers of Congress over the postal service and commerce may be invoked in support of the constitutionality. In respect of matters of this character the legislative power is exercised under constitutional limitations not applicable where the measures are directed against public enemies. See Miller *v.* United States (1870), 11 Wall. 268, 20 L. ed. 135.

Certain other questions of constitutional law are discussed in connection with the provisions of the Act under which they arise.

Act considered under international law.

It has already been shown that there is no such general acceptance by modern international law of the doctrine that one of the immediate consequences of war is the interdiction of commerce between the opposing belligerents that the rule might be regarded as part thereof. Introduction, p. 7.

Such laws are part of the municipal law, but as such must be enforced by the local courts regardless of the political consequences that may ensue from such enforcement. This point is well stated by Waite, C. J., in Young *v.* United States (1877), 97 U. S. 39, 24 L. ed. 992: "As war is necessarily a trial of strength between the belligerents, the ultimate object of each, in every movement, must be to lessen the strength of his adversary, or add to his own. As a rule, whatever is necessary to accomplish this end is lawful; and, as between the belligerents, each determines for himself what is necessary. If, in so doing, he offends against the accepted laws of nations, he must answer in his political capacity to other nations for the wrong he does. If he oversteps the bounds which limit the power of belligerents in legitimate warfare, as understood by civilized nations, other nations may join his enemy, and enter the conflict against him. If, in the course of his operations, he improperly interferes with the person or property of a non-combatant subject of a neutral power, that power may redress the wrongs of its subject. But an aggrieved enemy must look alone for his indemnity to the terms upon which he agrees to close the conflict." See also Ware *v.* Hylton (1796), 3 Dall. 199, 1 L. ed. 568.

Act and existing treaties.

The declaration of war had the effect of terminating all treaties entered into with the German Empire or with any component state thereof. The German view is identical. See proclamation of August 10, 1914, in Reichsgesetzblatt, 1914, 367. Excepted are such provisions as expressly or impliedly are to remain in force even during war.

The provisions of articles 23 and 24 of the Treaty of July 11, 1799, with Prussia, are of the latter character. Article 23 provides: "If war should arise between the two contracting parties, the merchants of either country then residing in the other, shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects, without molestation or hindrance; and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price." Article 24 of the same Treaty, which deals with the treatment of prisoners of war, concludes as follows: "And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but on the contrary that the state of war, is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature and nations."

The Treaty of 1799 expired by its own limitations on June 22, 1810, but certain of its provisions including the provisions of articles 23 and 24 were revived by article 12 of the Treaty of May 1, 1828. See Wheaton's International Law (4th Eng. ed. by Atlay), 628–644. There is no doubt that the German Empire succeeded to the rights and duties of Prussia under this treaty. Huberich and King, German Prize Code, p. XXIII, and authorities there cited; see also The Appam (1917), 243 U. S. 124. The question of the effect of war on this treaty is discussed in Schultz, Jr., Co., Inc., *v.* Raimes & Co. (1917), 99 Misc. (N. Y.) 626, 164 N. Y. Supp. 454 (per McAvoy, J.): "This court must take judicial notice of the public acts of the United States and its several departments, and, therefore, until this treaty is denounced as non-operative it would seem to confer upon alien enemies of German nationality, notwithstanding the existence of a state of war, the right to collect their debts by whatever process or remedy the United States or its several States and territories afford, pursuant to the provisions of our Federal Constitution that the treaties of the United States with foreign powers shall be the law of the land, anything in the constitution or laws of the several States to the contrary notwithstanding. That war dissolves all treaties between the contracting parties is a principle enunciated by many of the legal writers upon public law, but as express promises and engagements of nations should be inviolable, and the duty of the nation is to take care that she be not engaged in anything contrary to the duties which she owes to herself and others, and as nations may in their treaties insert such clauses and conditions as they think proper to make them perpetual or temporary or dependent upon certain events, it is competent to agree to abandon this principle of the law of nations and to contract with a view to obviate its effect. Although the treaty may become very oppressive to one of the contracting parties, it is not thereby revoked. Its revocation or denouncement requires a public act of which the judicial courts, executives and legislative assemblies must take notice." A stipulation in a treaty to the effect that its provisions are to be executed in the event of war is not cancelled by the outbreak of war. Levine *v.* Taylor (1815), 12 Mass. 8.

In order to carry out more effectively the provisions of treaties of this character, acts of Congress were passed on July 6, 1798, and July 6, 1812, now incorporated in U. S. Rev. St., section 4068, which provides that when an alien enemy resident within the United States "is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality."

The provision just quoted applies to subjects of certain enemy states, there being no provisions in any treaties with the other Central Powers similar to the one in force with the German Empire. As a matter of practice, a permit to leave is issued as a matter of course, unless there is some particular record showing that the applicant is politically dangerous.

An act of Congress is of equal dignity with and therefore if passed subsequently to the entering into of a treaty, supersedes such treaty, so far as the municipal authorities are concerned. Yet in so far as they are not inconsistent with each other, both the treaty and the act of Congress must be given effect. It follows from this, that the courts and other authorities must give effect to the provisions of article 23 of the Treaty of 1799, in so far as they are not inconsistent with the provisions of any act of Congress.

Regarding the Acts of 1798 and 1812 above referred to, Chancellor Kent in Clarke *v.* Morey (1813), 10 John. (N. Y.) 69, says, that they "may be considered as a true exposition and declaration of the modern law of nations." In regard to provisions similar to those contained in the Treaty of 1799 and in the Revised Statutes above quoted, Chancellor Kent says: "We all recollect the enlightened and humane provision of Magna Charta (c. 30) on this subject; and in France the ordinance of Charles V as early as 1370, was dictated with the same magnanimity; for it declared that in case of war, foreign merchants had nothing to fear, for they might depart freely with their effects, and if they happened to die in France, their goods should descend to their heirs. (Henault's Abrégé Chron. tom. 1, 338.) So all the judges of England resolved, as early as the time of Henry VIII, that if an alien came to England, before the declaration of war, neither his person, nor his effects, should be seized in consequence of it. (Bro. tit. Property, pl. 38. Jenk. Cent. 201. Case 22.) And it has now become the sense and practice of nations, and may be regarded as the public law of Europe (the anomalous and awful case of the present violent power on the continent excepted), that the subjects of the enemy (without confining the rule to merchants), so long as they are permitted to remain in the country, are to be protected in their persons and property, and to be allowed to sue as well as to be sued. (Bynk. Quaest. Jur. Pub. b. 1, c. 7, c. 25, § 8.) It is even held, that if they are ordered away in consequence of the war, they are still entitled to leave a power of attorney, and to collect their debts by suit. (Emerigon, Traité des Assurances, tom. 1, 567.)

"Modern treaties have usually made provision for the case of aliens found in the country, at the declaration of war, and have allowed them a reasonable time to collect their effects and remove. Bynkershoek gives instances of such treaties, existing above two centuries ago; and for a century past, such a provision has become an established formula in the commercial treaties. Emerigon, who has examined this subject with the most liberal and enlightened views, considers these treaties as an affirmance of common right, or the public law of Europe, and the general rule is so laid down by the later publicists, in conformity with this provision. (Vattel, b. 3, c. 4, § 63. Le Droit Public de l'Europe, par Mably, Oeuvres, tom. 6, 334.) Some of these treaties have provided that foreign subjects should be permitted to remain and continue their business, notwithstanding a rupture between the governments, so long as they behave peaceably, (Treaty of Commerce between Great Britain and France, in 1786, and of Amity and Commerce between Great Britain and the United States, in 1794); and where there was no such treaty, the permission has been frequently announced in the very declaration of war. Sir Michael Foster (Discourse on High Treason, 185, 186) mentions several instances of such declarations; and he says that the aliens were thereby enabled to acquire personal chattels, and to maintain actions for the recovery of their personal rights, in as full a manner as alien friends. The Act of Congress of July, 1798 (now Revised Statutes, section 4068), before alluded to, provides, in cases where there may be no existing treaty, a reasonable time, to be ascertained and declared by the President, to alien enemies resident at the opening of the war, for the recovery, disposal and removal of their goods and effects. This statute may be considered, in this respect, as a true exposition and declaration of the modern law of nations.

"The opinion that wars ought not to interfere with the security and collection of debts, has been constantly gaining ground, and the progress of this opinion is worthy of notice, as it will teach us with what equity and liberality, and with what enlarged views of national policy, the question has been treated. A right to confiscate the debts due to the enemy was the rigorous doctrine of the ancient law; but a temporary disability to sue, was all Grotius (b. 3, c. 20, § 16) seemed willing to allow to hostilities. Since his time, continued and successful efforts have been made to strengthen justice, to restrain the intemperance of war, and to promote the intercourse and happiness of mankind. The power to collect debts, notwithstanding the event of war, is not an unusual provision in the conventional law of nations. In the treaty of commerce between England and France, in 1713, it was provided by the 2d article, that in case of war, the subjects of each power residing in the dominions of the other, should be allowed six months to retire with their property, and in the meantime, should be at full liberty to dispose of the same, and the subjects on each side were to have and enjoy good and speedy justice, so that during the said space of six months they may be able to recover their goods and effects. So also in the treaty of commerce between Great Britain and Russia, in 1766, and again in 1797, it was provided, that in case of war, the subjects of each were to be allowed one year to withdraw with their property; and they were also authorized to substitute others to collect their debts for their benefit, which debts the debtors should be obliged to pay in the same manner as if no such rupture had happened. A similar provision, in substance, was inserted in the treaty between the United States and Russia, in 1785; and in the treaty of commerce between the United States and Great Britain, in 1795, the government of each country was prohibited to interfere, either by confiscation or sequestration, with private contracts, and it was expressly declared to be unjust and impolitic, that the debts of individuals should be impaired by national differences."

See also treaty between the United States and Spain (1795) and Italy (1871). The President of the Confederate States, by proclamation fixed the time within which alien enemies should leave the country. Until then they could sue and be sued. Bishop *v.* Jones (1866), 28 Tex. 294.

Effect of severance of diplomatic relations.

By the declaration of a state of war with Austria-Hungary (December 7, 1917) all treaties between the United States and Austria-Hungary are terminated. There is no clause in any treaty with Austria-Hungary similar to the one in the Treaty of 1799 with Prussia.

The severance of diplomatic relations does not abrogate existing treaties. The treaties between the United States and Austria-Hungary and Turkey remained unaffected by the termination of diplomatic intercourse, except in so far as they are inconsistent with the provisions of an act of Congress passed subsequently to their ratification.

This question came before a New York Surrogate's Court in June, 1917, on a motion to amend *nunc pro tunc*, as of April 25, 1917, a decree judicially settling the account of a public administrator of an estate by providing that the distributive share of a certain person who was a nonresident alien residing in, and a subject of, the Kingdom of Hungary be paid to the Swedish consul-general in charge of Austro-Hungarian interests. A question was raised as to the right of the Swedish consul-general to receive money on behalf of subjects of Hungary in view of the fact of the severance of diplomatic relations between that country and the United States. "In reply to an inquiry addressed by the Deputy Attorney-General to the Department of State at Washington, D. C., he was informed that, as a state of war does not exist between the United States and Austria-Hungary, the question of the right of the Swedish consul-general to receive such moneys would seem to depend, on the one hand, on the laws of the State of New York, and on the other hand, on the laws of Austria-Hungary, and possibly of Sweden, relating to the rights and duties of their consular officers. The Deputy Attorney-General thereupon withdrew his objections, and as I am satisfied that under the treaties existing between the United States and the kingdom of Austria-Hungary the consul-general of Austria-Hungary would have a right to receive any and all funds to which subjects of those countries might be entitled, were such an official here, and it appearing that the Swedish consul-general has taken charge of Austro-Hungarian interests in this country, pursuant to an agreement with the Austro-Hungarian government, and with the consent and approval of the United States government, there is no doubt in my mind that the Swedish consul-general is, for the present at least, the duly authorized representative in the United States of the kingdom of Austria-Hungary, and the motion to amend is therefore granted." Noble, S., in Matter of White (1917), 100 Misc. (N. Y.), 393, 166 N. Y. Supp. 712.

"We may concede that a state of war may in fact exist between two nations without any official declaration to that effect by either nation. Whether such is the existing situation as between the United States and Austria-Hungary we do not feel called upon to determine on this appeal." Angellotti, C.J., in Taylor *v.* Albion Lumber Co. (Cal., 1917), 168 Pac. 348. But in view of the declaration of the competent authorities of the political department of the government set forth in Matter of White, *supra*, and the fact that the declaration of a state of war with the Dual Monarchy was not made retroactive, it is conclusively shown that until December 7. 1917, no state of war existed.

Applicability of Hague Convention.

Under the Annex to the Hague Convention of October 18, 1907, respecting the Laws and Customs of War on Land (ratified by the United States on February 23, 1909) it is provided in article 23 (h) that it is especially forbidden to "declare abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party." The Convention provides (article 2) that its provisions and the provisions of the Annex thereto do not apply except between the contracting parties, and then only if all the belligerents are parties to the Convention. But granting that there is no question as to the binding effect of the Convention, the question arises as to whether article 23 (h) abrogates the common-law rule in regard to the suspension of the rights of alien enemies to institute legal proceedings and whether it imposes any treaty limitation on legislation. This point was discussed at length by Lord Reading, C. J., in Porter *v.* Freudenberg [1915] 1 K. B. 857: "If we look in the first place at the terms of the paragraph itself and apart from its collocation and context, we find that what it forbids is, as also in paragraph (d), a 'declaration':—'It is forbidden to declare.' This has no application to a country in which, as in England, there is no room for a declaration. By the existing law of the country the mere fact of war operates *ipso facto* to suspend any rights of action which at the time of the outbreak of war any alien enemy may possess. . . . Extending our view from the paragraph itself to the immediate context, we find that it is included in a group of paragraphs forming article 23, every other of which relates solely to the conduct of a military force and its commanders in a campaign and not at all to the administration of the law respecting alien enemies at home; that the chapter of which the article forms part is entitled 'Means of injuring the Enemy; Sieges and Bombardments,' and that the section of the Annex to which the chapter belongs bears the general heading 'Of Hostilities.' Extending our view still further to the Convention itself, we find the declaration which governs the whole Annex and controls its application in article 1: 'The contracting powers will issue to their armed land forces instructions which shall be in conformity with the "regulations respecting the laws and customs of war on land" annexed to the present Convention.' . . . Our view is that article 23 (h), read with the governing article 1 of the Convention, has a very different and very important effect, and that the paragraph, if so understood, is quite properly placed as it is placed in a group of prohibitions relating to the conduct of an army and its commander in the field. It is to be read, in our judgment, as forbidding any declaration by the military commander of a belligerent force in the occupation of the enemy's territory which will prevent the inhabitants of that territory from using their Courts of law in order to assert or to protect their civil rights. . . . There are two matters brought before us by the learned Attorney-General in connection with the interpretation of article 23 (h) which, in our opinion, ought not to be left unnoticed. The first of these is the letter addressed on March 27, 1911, by our Foreign Office to Professor Oppenheim, of Cambridge, in answer to an inquiry made by him on the preceding February 28 in reference to the views which had been expressed in regard to the paragraph by some foreign jurists. The reply of the Foreign Office was published. It contains a powerfully reasoned exposition of the view that this paragraph has no concern with the municipal law but relates to the conduct of those who are in command of an army in occupation of the territory of an enemy. The second matter is an incident of a diplomatic character. On the eve of the outbreak of the present war the German Ambassador in London addressed a communication to our Foreign Office to this effect: 'In view of the rule of English law the German Government will suspend the enforcement of any British demands against Germans unless the Imperial Government receives within twenty-four hours an undertaking as to the continued enforceability of German demands against Englishmen.' No arrangement was arrived at. We refer to these two incidents, not because either of them can affect our judgment on the question of the interpretation of article 23 (h), but because it is right that it should be made quite clear to every one that as early as the spring of 1911 the view of the British Government as to its true interpretation was made public to the world and that the situation was perfectly well understood by the German Government. It is to be regretted that the paragraph should be so drawn as to give rise to controversy as to its proper interpretation, but, for the reasons given, we think the paragraph has not the extended meaning claimed for it and does not affect the ancient rule of the English common law that an alien enemy, unless with special license or authorization of the Crown, has no right to sue in our Courts during the war." Accord: Labuschagne *v.* Maarburger, South African L. R. [1915] Cape, 423.

The same view as to the scope and application of this article is adopted by General George B. Davis, one of the American delegates to the Hague Conference, in an article on "The Amelioration of the Rules of War on Land," 2 Am. J. of Int. L. 63. See also Pearce Higgins, Hague Peace Conferences, 235; Holland, in 28 Law Quarterly Review, 94; Cobbett, Cases and Opinions on International Law (3d ed.), Part II, 85, 86. It must, therefore, be regarded as the accepted view in England and the United States that the article merely imposes a limitation on the proceedings of commanders of armies in the field. It does not impose a limitation on the power of the legislature, nor abrogate the rules of the common law.

Purposes of Act and rules of interpretation.

From the language employed in the Act as well as from the evident intent of the framers of the bill and the legislative debates, the general purposes of the Act, in so far as the Act relates to the trade with and the property of enemies, are the following:

1. To interdict all intercourse, commercial or non-commercial, with all persons who are enemies or allies of enemy within the meaning of the Act, and to prohibit the doing of acts tending to the financial benefit of such persons.
2. To leave unaffected the property and other civil rights of resident alien enemies, including corporations organized under the laws of any State of the United States, whose stockholders are wholly or in part alien enemies.
3. To conserve and protect through governmental agencies, and not to confiscate, the tangible and intangible property of non-resident alien enemies, in such manner, however, that such property may not be used as the basis of credit in foreign countries by the enemy owner.
4. To leave in force the common law provisions regarding the effect of war on contracts, statutes of limitation, rights to devises and bequests, and rights as parties to actions, except in so far as the Act mitigates the rigor of the common law.
5. To provide for a liberal system of licensing transactions within the letter, but not within the spirit of the Act.

The purposes of the Act are well stated by Assistant Attorney-General Warren (Hearings before the Sub-Committee—on H. R. 4960, 130, 131): "Trade with the enemy is unlawful under the common law both in England and the United States. . . . The questions of what constitutes trade with the enemy and what constitutes an enemy within the purview of the illegal trade are settled by the decisions of the English and of the American courts. These decisions constitute part of the common law of the two countries. . . . Changes in economic, commercial, financial, military, naval, and political conditions may make it highly necessary that doctrines as to trade with the enemy laid down by our courts a century ago should be modified by the legislature either by making them more stringent or less stringent, according to the needs and conditions of the present day.

The complexity of modern business demands far greater stringency in certain directions than the old cases decided by the courts provided for. On the other hand, the more enlightened views of the present day as to treatment of enemies make possible certain relaxations in the old law. In former days, trade consisted wholly in the actual transfer and transport of commodities. To-day a form of trade even more helpful to the enemy consists of transfer of credits and money by letter, cable, or wireless. Hence, while formerly the mere accumulation of enemy property or funds in this country did not assist the enemy materially, so long as it remained here, now with the ready ease by which credits may be transferred and funds used it becomes just as important to prevent an enemy from building up, using, or transferring his credit or credits as from actually transferring physical property. Hence much more rigid supervision or prevention of such transactions becomes necessary. So also, with the greater ease of intercommunication between countries, it may become necessary to expand the class of persons who, within the purview of unlawful trade with the enemy, shall be deemed 'enemy.' . . . For these reasons a modern trading-with-the-enemy act must define the term 'enemy' according to the particular conditions confronting each country so legislating, and likewise must on the same lines define the particular acts which it thinks necessary to forbid as unlawful trade. It was my intent in drafting this bill to make it as little restrictive of American commerce and as liberal toward the enemy private person as was compatible with the safety of the United States and with justice to American interests. . . . The present bill is less stringent, and designedly so, than the present English act. And it is less stringent than the law of trade with the enemy as laid down by our courts, for it provides for a system of licenses by which any act or business forbidden by the bill may be licensed to be done, if the Secretary of Commerce shall be of opinion that it can be carried on or done with safety to the United States. . . . The theory of the bill is that enemy property in this country shall not remain in the hands of the enemy's debtor or agent here; but that, if the President so directs, it shall be temporarily conscripted by the Government to finance the Government through investment in its bonds, and to be paid back to the enemy or otherwise disposed of at the end of the war as Congress shall direct. In other words, we fight the enemy with his own property during the war; but we do not permanently confiscate it. Moreover, this temporary conscription of enemy property is also conservation of enemy property; for it is taken from the hands of debtors or agents, as to whose solvency the enemy would otherwise have to assume the risks, and invested in the safest security in the world—United States bonds—or deposited in Government depositaries."

The purposes were stated by Senator Ransdell in reporting the bill to the Senate (65th Cong., 1st Sess., Sen. Report No. 111, 1, 2) as follows: "The purpose of this bill is to mitigate the rules of law which prohibit all intercourse between the citizens of warring nations, and to permit, under careful safeguards and restrictions, certain kinds of business to be carried on. It also provides for the care and administration of the property and property rights of enemies and their allies in this country pending the war. The spirit of the act is to permit such business intercourse as may be beneficial to citizens of this country, under rules and regulations of the Secretary of Commerce, which will prevent our enemies and their allies from receiving any benefits therefrom until after the war closes, leaving to the courts and to future action of Congress the adjustment of rights and claims arising from such transactions. Under the old rule warring nations did not respect the property rights of their enemies, but a more enlightened opinion prevails at the present time, and it is now thought to be entirely proper to use the property of enemies without confiscating it; also to allow such business as fire insurance, issuance and use of patents, etc., to be carried on with our enemies and their allies, provided that none of the profits arising therefrom shall be sent out of this country until the war ends."

The Act is prospective in its operation [Cp. Conrad *v.* Waples (1877), 96 U. S. 279, 24 L. ed. 721], and renders transactions entered into prior to October 6, 1917, neither valid nor invalid. Cp. section 7 (b), and notes to section 8 (b).

In the interpretation of the penal provisions of the Act the ordinary rules apply. Speaking of the Civil War acts and proclamations relating to non-intercourse, Leavitt, D. J., in U. S. *v.* The Henry C. Homeyer (1868), 2 Bond, 217, F. C. No. 15353, says: "This being a proceeding under a highly penal statute, it is a case in which the right to such a decree (of condemnation) must be made out *strictissimi juris*, and no presumptions or conclusions are allowable, unfavorable to the claimants, unless based on clear and indisputable facts, and sustained and demanded by the positive and explicit requirements of the law. . . . The court will not, on grounds purely technical, base a decree of condemnation. A just government does not demand such an invasion of the great principles of justice."

Territorial operation of Act.

The Act is operative throughout the United States (as defined in section 2) and affects all transactions within this territory. It does not apply to citizens of the United States residing without the limits of the United States, nor to property outside of the United States although under the control of persons within the jurisdiction.

The leading case is Bell *v.* Reid (1813), 1 M. & S. 726. Lord Ellenborough, C. J., in delivering the opinion of the court said: "The question is, whether a natural-born subject of His Majesty, domiciled in a neutral country such as the United States of America then were, can, in respect of such his domicile, be entitled to enjoy the commercial benefits and privileges belonging to the citizens of that country, and be exempt from the disabilities and restraints attaching on a natural-born subject of this country." After a consideration of the case of Scott *v.* Schwartz, Comyn's Rep. 677, and Wilson *v.* Marryatt, 8 T. R. 31, 1 Bos. & Pul. 430, he continues: "For ordinary commercial purposes, and the general objects of trade, a British-born subject is capable of becoming the adopted subject of another state, so as to enjoy the privileges of commerce allowed to that state. But when a war breaks out with the parent state, it is said that natural allegiance requires that he must abstain from any act which is contrary to the interests of the parent state; that trading with an enemy is an act of that description, affording aid and comfort to the enemy; and such trading, though not of a hostile nature, may be the means of carrying on a treasonable intercourse with the enemy. And the same reason extends to the natural-born subjects of any other state who have become the adopted subjects of our own country, if their parent state become engaged in hostilities. Whether these consequences have or have not in them so much probable danger as to require restriction is a question of political expediency well worthy perhaps the attention of the legislature. In the meantime we cannot help remarking that the trading with the enemy by a natural-born subject has, under certain qualifications, been recognised, as appears by the case of 'Elizabeth,' cited in Potts *v.* Bell, 8 T. R. 556, before Sir Thomas Denison and another common-law judge, where the goods which had been taken as coming from an enemy's port were restored to a British-born subject, who was established in a foreign country. Upon inquiry I find that a case has occurred at the Cockpit, before the present Master of the Rolls, in which precisely the same point was decided, and in which his honour concurred. Contemplating these uniform authorities, according to which a trading with an enemy by a British-born subject domiciled abroad has been regarded as innocent, and entitled to protection from condemnation, it is impossible for us, upon this occasion, to hold that these cases were not well decided." See also Esposito *v.* Bowden (1857), 7 Ellis & B. 763.

The American Act is solely directed against acts done within the United States. Cp. section 3: "It shall be unlawful for any person in the United States." The succeeding subsections of this section and the other sections of the Act are to the same effect. The trading with the enemy acts of some of the belligerents (e. g., France, Italy) are directed against acts of nationals wherever resident.

The circumstances of a case may furthermore be such that they give rise to a contractual obligation under the laws of a country other than the United States, although involving a violation of the Act. While American courts might refuse, even after the war, to take jurisdiction of a suit based on a transaction entered into abroad, and contrary to the public policy of the United States, as announced in the Act, [cp. Ware *v.* Jones (1878), 61 Ala. 288] a foreign court will not give legislation of this character any extraterritorial force. Cp. Huntington *v.* Attrill [1893] A. C. 150; Huntington *v.* Attrill (1892), 146 U. S. 657, 36 L. ed. 1123. A contract made outside the United States involving a violation of the Act may be enforceable in a foreign court, if other circumstances confer jurisdiction. Cp. Henkel & Co. *v.* Brice, Whyte & Sons, Ltd., Court of Appeal, The Hague, November 24, 1916, Weekblad, No. 10060, more fully discussed *infra*, p. 173. A view similar to that of the Netherlands court is contained in a dictum in an early American case: "Although during a war between the nations of creditor and debitor, the former cannot compel the latter, by a judiciary sentence in his own country to pay the money, such a sentence may be obtained during the war in another country if the debitor be found there." Per Wythe, C., in Page *v.* Pendleton (1793), Wythe's Va. Rep. 211. Where assumption of jurisdiction is discretionary, the American courts, while the United States was neutral, have ordinarily refused to assume jurisdiction where the countries of which the opposing belligerents were subjects have prohibited payments to alien enemies. Watts, Watts & Co., Ltd. *v.* Unione Austriaca di Navigazione (1915), 224 Fed. 188, affirmed (1915), 229 Fed. 136. Rhederei Actien-Gesellschaft Oceana *v.* Clutha Shipping Co., Ltd. (1915), 226 Fed. 339; The Kaiser Wilhelm II (1916), 230 Fed. 717. Contra: Compagnie Universelle *v.* Service Corporation (N. J., 1915), 95 Atl. 187, holding that the courts of a neutral state will take jurisdiction of a suit for the specific performance of a contract for the sale of land situated in the neutral country although the litigants are respectively the subjects of and resident within the territory of opposing belligerents. See Huberich and King, Jurisdiction of Courts of Neutrals in Actions between Subjects of States at War, in 59 Sol. Jour. 702.

Time of going into effect of Act.

Under the general rule, the Act became effective from the first moment of the day on which it was approved, October 6, 1917. Where, however, the application of this rule will work a hardship or injustice, as, e. g., to destroy the validity of contracts entered into with persons who become enemies under the Act, but are not such at common law, the exact time of approval will be taken into account. United States *v.* Stoddard (1899), 91 Fed. 1005. The Act received the signature of the President on October 6, 1917.

Definitions: "Enemy."

Sec. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

"Word 'enemy' as used herein shall be deemed to mean for the purposes of such trading and of this Act."

The word "enemy" as used in the Act has a special meaning. Great confusion arises because of a failure to distinguish between the meaning of the term "enemy" when used in reference to the political status of such person, e. g., in the United States Revised Statutes, section 4067, relating to apprehension, restraint, internment or removal of designated persons, "natives, citizens, denizens or subjects of the hostile nation or government," and which applies only in cases of declared war or actual or threatened invasion, and the use of the term in connection with the civil status of a person.

In using the term "enemy" in connection with civil rights and disabilities, a distinction must be made between the use of the term in the sense of a definition such as given in the Act or as used in various State statutes relating to acquisition or conveyance of land, limitation, etc., and the term "alien enemy" as used at common law. At common law, in turn, the words "alien enemy" are used in different senses.

"Any individual, partnership, or other body of individuals."

Not any "person" as defined in this section, *infra*. It does not include corporations. As to corporations, see *infra*.

" Of any nationality."

Enemy character under the Act and at common law is primarily determined by residence or place of business, and not by nationality.

The personal allegiance of the person is immaterial. A citizen of the United States resident in an enemy country is an enemy.

"The question is, whether a man, who resides under the allegiance and protection of a hostile State for all commercial purposes, is not to be considered for all civil purposes as much an alien enemy as if he were born there. If we were to hold that he was not, we must contradict all the modern authorities upon this subject. That an Englishman, from whom France derives all the benefit which can be derived from a natural-born subject of France, should be entitled to more right than a native Frenchman would be a monstrous proposition. While the Englishman resides in the hostile country he is a subject of that country, and it has been held that he is entitled to all the privileges of a neutral country while resident in a neutral country (Marryatt *v.* Wilson, 1 Bos. & P. 430)." McConnell *v.* Hector (1802), 3 Bos. & P. 113, per Lord Alvanley, C. J.

So also, per Lord Reading, C. J., in Porter *v.* Freudenberg [1915] 1 K. B. 857: "Trading with a British subject or the subject of a neutral state carrying on business in the hostile territory is as much assistance to the alien enemy as if it were with a subject of enemy nationality carrying on business in the enemy state, and, therefore, for the purpose of the enforcement of civil rights, they are equally treated as alien enemies. It is clear law that the test for this purpose is not nationality but the place of carrying on the business: Wells *v.* Williams, (1 Ld. Raym. 282); McConnell *v.* Hector, per Lord Alvanley C. J. (3 Bos. & P. 113); Janson *v.* Driefontein Consolidated Mines [1902] A. C. at p. 505, per Lord Lindley. When considering the enforcement of civil rights a person may be treated as the subject of an enemy state, notwithstanding that he is in fact a subject of the British Crown or of a neutral state. Conversely a person may be treated as a subject of the Crown notwithstanding that he is in fact the subject of an enemy state. . . . Such a person is equally treated as an alien enemy provided he is voluntarily resident there, having elected to live under the protection of the enemy state. For the purpose of determining civil rights a British subject or the subject of a neutral state, who is voluntarily resident or who is carrying on business in hostile territory, is to be regarded and treated as an alien enemy and is in the same position as a subject of hostile nationality resident in hostile territory. Professor Dicey, in his treatise on Parties to an Action, at p. 3, states the law accurately in the following proposition: 'Under the term "alien enemy" are included not only the subjects of any state at war with us, but also any

British subjects or the subjects of any neutral state voluntarily residing in a hostile country.'" See also Scotland *v.* South African Territories, Ltd. (1917), 33 T. L. R. 255.

Under the Canadian Orders of May 2, 1916, section 1 (1) it is expressly provided that the term "enemy" does not "include a subject of His Majesty or of any state or sovereign allied to His Majesty who is detained in enemy territory against his will, nor shall such last-mentioned person be treated as being in enemy territory."

"Under the recognized rules governing the conduct of a war between two nations, Cuba, being a part of Spain, was enemy's country, and all persons, whatever their nationality, who resided there were, pending such war, to be deemed enemies of the United States and of all its people. The plaintiff, although an American corporation, doing business in Cuba, was, during the war with Spain, to be deemed an enemy to the United States with respect of its property found and then used in that country, and such property could be regarded as enemy's property, liable to be seized and confiscated by the United States in the progress of the war then being prosecuted; indeed, subject under the laws of war, to be destroyed whenever, in the conduct of military operations, its destruction was necessary for the safety of our troops or to weaken the power of the enemy. In Miller *v.* United States, 11 Wall. 268, 305, the court, speaking of the powers possessed by a nation at war, said: . . . 'It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property. In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy's country, no matter what his nationality.'" Per Harlan, J., in Juragua Iron Co. *v.* United States (1908), 212 U. S. 297, 53 L. ed. 522. American corporations doing business in enemy territory are not enemies under the Act. See *infra*, p. 63.

American citizens are not bound to return from foreign countries (including enemy countries) on a declaration of war, unless so ordered by their government. The Joseph (1813), 1 Gall. 545, F. C. No. 7533. But the civil disabilities of enemy always attach. No order requiring citizens to return has been issued by the United States up to January 15, 1918.

The subjects of allied and neutral countries resident within the enemy country are enemies. The Venice (1864), 2 Wall. 258, 17 L. ed. 866; Young *v.* United States (1877), 97 U. S. 39, 24 L. ed. 992; Gallego *v.* United States (1908), 43 Ct. Cl. 444.

Personal political opinions are immaterial. "It is not the private character or conduct of an individual, which gives him the hostile or neutral character. It is the character of the nation, to which he belongs, and where he resides. He may be retired from all business, devoted to mere spiritual affairs, or engaged in works of charity, religion and humanity, and yet his domicile will prevail over the innocence and purity of his life. Nay more, he may disapprove of the war, and endeavor by all lawful means to assuage or extinguish it, and yet, while he continues in the country, he is known but as an enemy." Per Story, J., in Society for the Propagation of the Gospel *v.* Wheeler (1814), 2 Gall. 105, F. C. No. 13,156. See also Brown *v.* Hiatts (1872), 15 Wall. 177, 21 L. ed. 128. "This court cannot inquire into the personal character and dispositions of individual inhabitants of enemy territory." Mrs. Alexander's Cotton (1864), 2 Wall. 404, 17 L. ed. 915 (per Chase, C. J.); Miller *v.* United States (1870), 11 Wall. 268, 20 L. ed. 135; The Benito Estenger (1899), 176 U. S. 568, 44 L. ed. 592; Juragua Iron Co. *v.* United States (1908), 212 U. S. 297, 53 L. ed. 522.

" Resident within."

It seems that the word "resident" is not used in the sense of "domiciled." It is intended to cover any physical presence of some length, and to exclude cases of mere technical domicile. In the hearings before the House Committee on Interstate and Foreign Commerce, Secretary of State Lansing, in reply to the question as to whether in the definition of enemy, a distinction was intended to be made between "domiciled" and "resident," stated that he believed no distinction was intended to be made, though perhaps the word "resident" was a little broader than "domiciled." Hearings before the Committee on Interstate and Foreign Commerce—on H. R. 4704, 9.

It may be doubted whether a person may be treated as an enemy for civil and commercial purposes generally by reason of his domicile in an enemy country, unless he personally resides in that country. Page, War and Alien Enemies (2d ed.), 5. "It has been always held, that this incapacity (of alien enemies to sue) only applies to persons actually present in their own country at the time of the war. . . . The general allegation that the plaintiff is a resident of the State of Florida (enemy territory), and has been for several years is, probably, sufficient to bring him within the rule." Per Clerke, J., in Sanderson *v.* Morgan (1868), 39 N. Y. 231. A person may by operation of law have a domicile at a particular place where he has never been, but it could not be said that he resides there. Dorsey *v.* Brigham (1898), 177 Ill. 250. Hence, a married woman residing in England, but whose husband is a subject of and is domiciled and resident in an enemy country is entitled to sue. Princess Thurn and Taxis *v.* Moffitt [1915] 1 Ch. 58. And, conversely, a married woman residing separate and apart from her husband in an enemy country is an enemy though her husband is domiciled and resident in a non-enemy country.

"Residence in Germany not merely crossing the German frontier from Holland made him an alien enemy. Intention to reside is not sufficient. Residence implies a certain lapse of time." Per Lord Cozens-Hardy, M. R., in Tingley *v.* Müller [1917] 2 Ch. 144.

The Courts of the British Overseas Dominions have, however, taken a stricter view, and it has been held that where enemy nationality is combined with residence in an enemy country, then regardless of how temporary such residence may be, the person must be regarded as an enemy. Stern & Co. *v.* De Waal, South African L. R. [1915] Transvaal, 60. "As soon as Moll went to Germany they were contracts with the firm, one of whom was as soon as he returned to his own country, an alien enemy." Per McMillan, C. J., in Stoll *v.* Paterson & Co., Ltd. (1915), 18 West. Australia, 42. But persons of non-enemy nationality transiently within an enemy country, are not enemies, even during the period of time that they are actually within the enemy country.

National character acquired by residence ceases with residence. The Indian Chief (1800), 3 C. Rob. 12, 1 Roscoe P. C. 251; Harman *v.* Kingston (1811), 3 Camp. 150. A mere intention to remove is not sufficient. The President (1804), 5 C. Rob. 277, 1 Roscoe P. C. 475. A national character acquired by a residence ceases, the moment a person *bona fide* sets himself in motion to leave such residence. The Indian Chief (1800), 3 C. Rob. 12, 1 Roscoe P. C. 251; The Francis (1813), 1 Gall. 614, F. C. No. 5034. Clearly former residence in an enemy country does not justify treating a citizen as an enemy after he has left such country. The Peterhoff (1866), 5 Wall. 28, 18 L. ed. 564; Zacharie *v.* Godfrey (1869), 50 Ill. 186. Where a person of enemy nationality permanently abandons his domicile in enemy territory, he acquires a non-hostile character. His position is no different from that of a neutral or a national under the same circumstances.

The question in each case is whether it appears that a person by residence or trading in the enemy country, has become so identified with it as to be regarded as one of its subjects. Page, War and Alien Enemies (2d ed.), 8. The test is physical presence within the political limits of the enemy state, not subjection to the laws of such country. E. g., German firms doing business in China where they are by treaty extended extraterritorial privileges and are thereby subject only to German law, are not enemies within the meaning of the Act, unless such persons are doing business within enemy territory or otherwise come under the definition (section 2).

A subject of an enemy country residing within a neutral country, is regarded as a neutral. The Postilion (1778), Hay & M. 245; The San Jose Indiano (1814), 2 Gall. 268, F. C. No. 12,322, affirmed (1816), 1 Wheat. 208, 4 L. ed. 73. See also The Hypatia [1917] P. 36, reviewing the English and American cases. It has accordingly been held that a person of enemy nationality neither residing nor doing business in an enemy country, can sue. In re Mary Duchess of Sutherland (1915), 21 T. L. R. 238, 31 T. L. R. 394. But cp. Neuman *v.* Bradshaw (British Columbia, 1916), 33 West. L. Rep. 945; s. c. (1916), 10 West. W. R. 1332.

A contrary result was reached in Russell *v.* Skipwith (1814), 6 Binn. (Pa.) 241. This was an action of covenant for the recovery of a debt. The defendant pleaded the plaintiff was an alien enemy, born out of the allegiance of the United States and under the allegiance of the king of the United Kingdom and that the plaintiff was not a citizen of the United States nor resident within the same. To this there was a demurrer and joinder. Tilghman, C. J., said: "I am therefore of opinion that the defendant's plea is good, because it shows the plaintiff to be an alien enemy without any circumstance from which the protection of the government can be implied. But possibly the truth may be that Mr. Russell, although born a British subject, may at present be neither an enemy nor adhering to the enemy. And as I trust that the courts of Pennsylvania will always be forward in administering justice to aliens, on the most liberal principles recognized by the most civilized nations, I shall be for permitting the plaintiff's counsel to withdraw their demurrer and plead by way of replication any facts in favor of their client, which the truth of his case will justify."

Yeates, J., said: "The general principle laid down in the books is, that an alien enemy cannot support a suit in a court of justice; his rights are suspended during the war. The ground of the restriction and reason of the law is, that if he was permitted to maintain an action, he would have it in his power to withdraw the money recovered, and add it to the funds of his native country. In vain have I searched the entries, reports and elementary treatises, for any case wherein it has been held previously to 1777, that an alien enemy residing in a neutral country may maintain an action. The tenth article of the British treaty of 1795 does not legalize such a proceeding. I will not pretend to determine what political events gave birth to an alteration of the English law in the particular under consideration; but it appears clear to me that the residence of an alien enemy in a neutral country cannot form an exception to the reason or policy of the general principle; because if he can withdraw the money into a neutral country, he may readily transfer it from thence into his native kingdom. Odious as this branch of the law may be, inasmuch as in its operation it materially affects the private rights of individuals, it is nevertheless, binding on us. I am therefore of opinion that the demurrer should be overruled, and that the plaintiff should be at liberty to reply to the plea if he shall deem it advisable, upon payment of the costs incurred since his demurrer." Brackenridge, J., concurred with the Chief Justice.

" Territory (including that occupied by the military and naval forces)."

See notes *infra*, p. 92. What are the territorial limits of a foreign state is a political question of which courts will take judicial notice. Williams *v.* Suffolk Insurance Co. (1839), 13 Pet. 415, 10 L. ed. 226.

The Act expressly covers territory occupied by the military and naval forces of the enemy. In the absence of statute there is a question as to whether territory in the military or naval occupation of the enemy, is to be considered enemy territory. In Blackburn *v.* Thompson (1811), 3 Camp. 61, it was held that goods in transit to territory not in the occupation of the enemy were not in transit to an enemy country. In Hagedorn *v.* Bell (1813), 1 M. & S. 450, during the war between Great Britain and France, an insurance was effected on property shipped from Great Britain to Hamburg. At the time Hamburg was in the effective military occupation of the French, but retained its powers of civil government. It was held that the contract was valid, but the case turns partly on the Orders in Council. See also De Jager *v.* Atty.-Gen. of Natal [1907] A. C. 326.

Mere possession of a territory by an enemy's force does not of itself necessarily convert the territory so occupied into hostile territory or its inhabitants into enemies. The Gerasimo (1857), 11 Moore P. C. 88, 2 Roscoe P. C. 577: "What are the circumstances necessary to convert friendly or neutral territory into enemy's territory? For this purpose, is it sufficient that the territory in question should be occupied by a hostile force, and subjected, during its occupation, to the control of the hostile power, so far as such power may think fit to exercise control; or is it necessary that, either by cession or conquest, or some other means, it should, either permanently or temporarily, be incorporated with, and form part of, the dominions of the invader at the time when the question of national character arises? It appears to their Lordships that the first proposition cannot be maintained." See also The Manilla (1810), 1 Edw. 3; Donaldson *v.* Thompson (1811), 1 Camp. 429; Bolletta (1810), 1 Edw. 171.

With the constantly changing line of military occupation it may be difficult at times to determine whether a particular place is within the territory occupied by the military or naval forces of a nation with which the United States is at war. No merely temporary occupation during a raid is sufficient. The occupation must be complete. The persons residing in territory raided and occupied by the opposing armies alternately during the Civil War were held not to be prevented under the Act of Congress of July 13, 1861, from acquiring a valid title to property within the Confederate lines. Cartwright's Case (1872), 8 Ct. Cl. 465.

The position of Belgium and the occupied portion of northwestern France at the present time, January, 1918, is similar to the position of Hamburg in the case above mentioned. The Belgian and French governments claim civil control, and Belgium is in addition at war with the German Empire. In Great Britain, it was therefore, thought necessary to issue a Proclamation (February 16, 1915) declaring such occupied territory to be enemy territory within the meaning of the trading with the enemy acts and proclamations.

While the Act provides that territory in the occupation of the military or naval forces of the United States shall be deemed to be a part of the United States, it leaves territory in the effective military or naval occupation of Great Britain and her allies in the position of enemy territory. Trading with these territories is, therefore, prohibited, except under license.

The Trading with the Enemy (Occupied Territory) Proclamation of February 16, 1915, provides that territory in the effective military occupation of the enemy is to be deemed enemy territory and territory in the occupation of Great Britain or her allies is to be regarded as territory in friendly occupation. *Semble*, territory in the occupation of the military or naval forces of the United States would, however, not be friendly territory within the meaning of this Proclamation, because the relation between the United States and Great Britain is not technically that of allies.

"Resident outside the United States."

Regardless of nationality, a person resident within the United States is not an alien enemy, even though doing business in an enemy country. Cp. In re Hilckes, Ex parte Muhesa Rubber Plantations, Ltd., [1917] 1 K. B. 48, discussed below.

"A difficult question arises as to the position of alien enemies in this country by permission of the king, who may possess enemy character by reason of a commercial domicile acquired by residence or trading. It would probably be held that the fact of their coming to this country and remaining here during the war, was almost conclusive evidence that they intended to give up the domicile acquired by mere residence, while so far as they retained a house of business in the enemy country and carried it on during the war it is conceived that, *quoad* that trade, the alien would be deemed to possess enemy character." Page, War and Alien Enemies (2d ed.), 76. But not as regards other trade.

See subsections (b) and (c) *infra*.

" Doing business within such territory."

These words are used in the sense of "doing business" within enemy territory by means of branches or agencies or in some similar manner. Cp. section 4 (a). They do not mean doing business with a person residing in enemy territory. The distinction is clearly brought out in the cases dealing with foreign corporations "doing business" within a State. A Dutch firm selling goods and shipping them into Germany is not *per se* an enemy within the Act; it is doing business with persons in Germany, it is not doing business within Germany.

A person of any nationality resident outside the United States but in non-hostile territory, doing business in hostile territory, is an enemy as regards the transactions relating to the business carried on in hostile territory, but not further or otherwise.

His civil and commercial status elsewhere and in respect of other transactions remain unaffected. Page, War and Alien Enemies (2d ed.), 9, 76; The Jonge Klassina (1804), 5 C. Rob. 297. This view is also set forth by Powers, J., in Moss and Phillips *v.* Donohoe (1915), 20 Com. L. R. 580. "A man may have mercantile concerns in two countries, and if he acts as a merchant in both he must be liable to be considered as a subject of both with regard to the transactions originating respectively in those countries." See also The Hypatia [1917] P. 36.

An example of the extreme length to which a court may go in interpreting the words "doing business" is shown in a recent decision of the Scotch Court of Session, Van Uden *v.* Burrell [1916] S. C. 391, applying the corresponding provision ("carry on business") of the English Law. An action was brought at the instance of a Dutch firm composed of two partners, the subjects of and resident in Holland, and carrying on business in that country. It was admitted that the sole partners of the firm were individually interested in, though not the sole partners of a business carried on in Germany. The action had been instituted prior to the war. The partners also carried on business in Antwerp, then in military occupation. Strathclyde, Lord President, said: "In the action of payment I am of opinion that the process must be sisted, because the pursuers in the action, J. van t'Hoff and C. van t'Hoff, are, by their own admission, alien enemies. They both, by their own admission carry on business in Germany. They are, therefore, persons with whom the defender as a British subject, can, during the period that the war lasts, engage in no commercial intercourse. They are persons to whom the defender can make no payment of money and to whom he can give no security of any kind whatever. They are persons who cannot enforce their civil rights by invoking the assistance of His Majesty's courts of law. . . . It must not be forgotten that the principle which lies at the root of this legislation—I refer to the Trading with the Enemy Acts and also to the Royal Proclamation thereanent—is public policy, which forbids the doing of acts that will be, or may be, to the advantage of the enemy state by increasing its capacity for prolonging hostilities in adding to the credit, money, or goods, or other resources available to individuals in the enemy state. In short, as Mr. Justice Willes observed in the case of Esposito *v.* Bowden (1857), 7 Ellis & B. 763: 'It is now fully established that, the presumed object of war being as much to cripple the enemy's commerce as to capture his property, a declaration of war imports a prohibition of commercial intercourse and correspondence with the individuals of the enemy's country, and that such intercourse, except with the license of the Crown, is illegal.' And as was observed, in somewhat popular but even more forcible language, by the President of the Board of Trade: 'While the war is on, we ought to do everything in our power to injure and to ruin German finance. During the war we should do everything we can to destroy German credit, and to that end we should do everything in our power to cripple, cramp, squeeze, and destroy her trade.'"

It is submitted that this decision is not correct. It is true that Lord Reading, C. J., in Porter *v.* Freudenberg [1915] 1 K. B. 857, in a dictum says: "For the purpose of determining civil rights a British subject or the subject of a neutral state, who is voluntarily resident or who is carrying on business in hostile territory, is to be regarded and treated as an alien enemy, and is in the same position as a subject of hostile nationality resident in hostile territory." But this statement must be qualified. Page, War and Alien Enemies (2d ed.), 9, commenting on this dictum, says: "The Court of Appeal cannot have intended to lay down that the civil status of an individual, generally and for all purposes, is to be determined by ascertaining whether or not during the war he is carrying on business in hostile territory. For example, the Court of Appeal must not be taken to have decided that because an Englishman, resident and trading within the realm, and trading also in neutral and allied countries, may happen during the war also to be carrying on business in hostile territory, such a person for all civil purposes, or in respect of all his businesses, must be regarded as an alien enemy. It is, of course, clearly settled that such person, *quoad* his civil rights in respect of the particular business carried on in hostile territory, is stamped with enemy character, but it is submitted that in other respects his civil status is determined by his war domicil . . . and that the Court of Appeal in Porter *v.* Freudenberg did not, and did not intend to, impugn the rules for ascertaining war domicil." If we adopt the view of the Scotch Court in Van Uden *v.* Burrell, it would place in the general category of enemies, a large number of neutral firms and corporations, e. g., shipping and insurance companies, maintaining offices, branches or agencies in hostile territory, even as regards their transactions in non-hostile territory. Certain corporations organized in countries associated with the United States in the present war have continued doing business, with or without restrictions, through branches in hostile territory. It can hardly be supposed that the branches of such firms doing business in the United States should be regarded as branches of enemy firms, except as to transactions relating to the business in hostile territory. Nor can it be supposed that in giving the rights to abrogate insurance contracts [section 4 (a)] or certain other contracts [section 8 (b)] that the right should be capable of being exercised generally against neutral firms and corporations merely maintaining a branch office in hostile territory. So also as to surrender of property under section 7 (c).

" Any corporation incorporated within such territory."

The words "any corporation" include not alone corporations in the sense of that term as used in American law, but any association of individuals endowed by law with juristic personality. It includes therefore besides the corporation proper (Aktiengesellschaft), other forms of juristic persons known to German and Austrian law, e. g., the limited private company (Gesellschaft mit beschränkter Haftung).

The words "such territory" include the territories in the occupation of the armed forces of the enemy country. Therefore, corporations organized, e. g., under the laws of Belgium and having their place of business within territory in the military occupation of the German Empire are enemies within the meaning of the Act.

But even if the registered office of a corporation is within such occupied territory, but the business is in fact carried on outside such territory, the corporation has been held not to have an enemy character. Thus, in Société anonyme belge des mines d'Ajustrel (Portugal) *v.* Anglo-Belgian Agency Ltd., (C. A.) [1915] 2 Ch. 409, the plaintiff company was organized under the laws of Belgium, and had its principal office in Antwerp. Soon after the outbreak of the war, the business in Antwerp was closed, and the books of the company removed to London, from where all business was thereafter carried on. The business of the company was that of exploiting mines in Portugal. The English Trading with the Enemy Proclamation No. 2 of September 9, 1914, defines an enemy as "any person or body of persons of whatever nationality resident or carrying on business in the enemy country. . . . In the case of incorporated bodies, enemy character attaches only to those incorporated in an enemy country" (including by virtue of the Proclamation of February 16, 1915, territory in the effective military occupation of the enemy). It was held that the company was not an enemy within the English acts and proclamations. "It is, however, contended that the plaintiff company can no longer be regarded as incorporated in Belgium when Antwerp and almost the whole of Belgium are in the military occupation of the Germans. I cannot follow this argument. The plaintiff company is incorporated not in Antwerp, but in Belgium. It follows that in my opinion the plaintiff company is entitled to a declaration that it is not an 'enemy' within the meaning of any of the acts and proclamations." *Sed quaere* under Act.

The corporation need not be doing business within the enemy territory. If it is incorporated within the enemy territory it is an enemy, and a transaction with a branch, agency, or office of such corporation in a neutral (e.g., Mexico) or in a belligerent country at war with the Central Powers (e. g., branches or agencies of German banks in Japan) is a violation of the Act, even though such branch or agency is under supervision of, or in process of liquidation by, the governmental authorities of the country where it is located (e. g., branches of German banks in London). Under the English Trading with the Enemy Proclamation No. 2, of September 9, 1914, transactions with a branch of an enemy firm locally situated in British, allied or neutral territory, not being neutral territory in Europe, were declared not within the prohibition. Banking business with any branch of an enemy firm outside the United Kingdom was, however, forbidden by the Proclamation of January 7, 1915, but afterward licensed as to branches of the Imperial Ottoman Bank and the National Bank of Turkey situated in France, Cyprus or Egypt or in the Turkish Dominions in the military occupation of the Allies. Under the American Act no transactions with branches or agencies within the United States are permitted, except in compliance with section 4.

"Incorporated within any country other than the United States and doing business within such territory."

"Any country" here includes all countries other than the United States, whether neutral or belligerent. The words "doing business" are used in the sense indicated *supra.*

Domestic corporation doing business in enemy territory.

The employment of the words "other than the United States" excludes from the definition of "enemy" all American corporations, even though doing business in enemy territory, and appears to render obsolete the decision of the United States Supreme Court in Juragua Iron Co. *v.* United States (1908), 212 U. S. 297, 53 L. ed. 522, where it was held that an American corporation doing business in Cuba during the Spanish-American War was an alien enemy. This exception, however, does not apply to persons other than corporations, doing business in enemy territory.

In Nigel Gold Mining Co. *v.* Hoade [1901] 2 K. B. 849, the plaintiffs, a British company, were registered as a joint-stock company in Natal, their only property being a gold mine owned and worked by them in the Transvaal. Before the outbreak of the Boer War, the plaintiffs had effected with the defendant, a British subject, a policy of insurance of certain products of their mine, including the peril of enemies, and "arrests, restraints, and detainment of kings, princes, and people." Shortly after the war was declared, the Transvaal government seized some of the products insured. The plaintiffs had shut down their mine when war was declared and there was nothing to show that they intended to continue their business or mining operations in the Transvaal afterwards. Against recovery on the policy, it was urged that the subject-matter of insurance was enemy's property and that after the declaration of war, the policy became ineffective. It was pointed out that the company had been carrying on its business within the territory of the South African Republic and had acquired a commercial domicile in the Transvaal, that the products of its mine were Transvaal and not British property, and that after the declaration of war, the property was stamped with a hostile character and on the high seas would be subject to capture and condemnation. Speaking of this contention, Mathew, J., said: "In support of this contention recourse was had to the authority of cases decided in the English and American prize courts in the early part of the last century. There can be little doubt that these cases would not be followed now, and even when those decisions were pronounced their authority was rejected by eminent lawyers. (See The Venus, 8 Cranch, 253, at p. 279.) The sounder opinion would seem to be that the subject of one country, surprised by a declaration of war in the country where he has a commercial domicile, ought to have time allowed him to free himself from his commercial engagements and effect a removal of his property. The conflicting opinions upon this subject are discussed with great ability in Duer on Marine Insurance, vol. 1, lecture 5. In this case there was no indication of any intention on the part of the Natal company to continue their business in the Transvaal after war had been declared. There was no evidence of any intention on the part of the company to continue their mining operations while the war continued. No authority was cited to show that the supposed rule relied upon by the defendant had ever been recognised by or adopted in insurance law. I am satisfied that for the purposes of this case the gold products in question are not to be regarded at the time of the seizure as enemies' property merely by reason of the commercial domicile of the company when war was declared. But the same result was sought to be reached in a different way. It was said that the plaintiff company had a two-fold character. It was a British company and a Transvaal company; it was amphibious, and was at once friendly and hostile. It was urged that the goods should be deemed to be Transvaal goods, and that the company should be deemed to be a Transvaal company, and that to indemnify the plaintiffs should be deemed to be an addition to the resources of the Transvaal government, and therefore to be against public policy. But this argument seems to me to offer a series of fictions in lieu of the plain facts. I am of opinion that the gold products in question were British goods, and were seized by a hostile force, and that the loss is covered by the policy. My judgment is therefore for the plaintiff company."

The question has come up in England whether an English company incorporated to acquire a rubber plantation in a German colony was an alien enemy within the meaning of that term in the law relating to alien enemy plaintiffs. The registered offices of the company were in London and all of the directors and the secretary were British subjects, as were also a majority of the shareholders. A number of shares were held by Germans. As a result of certain litigation, carried on before the war before the German courts, the English company was awarded a certain sum for costs. At the beginning of the war a suit was pending in the English courts instituted by the company against the judgment debtor on the German judgment and this action was pending in August, 1914. Subsequently, the debtor was interned in England as an alien enemy and adjudicated a bankrupt. The company claimed to prove in the bankruptcy for the amount of the German judgment. The court below refused to allow proof of the claim on the ground that the company was carrying on business in an enemy country and should, therefore, be regarded as an alien enemy.

Upon an appeal, the Court of Appeal, In re Hilckes, Ex parte Muhesa Rubber Plantations, Ltd. [1917] 1 K. B. 48, held that the mere fact that the company was doing business in an enemy country did not constitute it an enemy company and that the proof should be allowed. Lord Cozens-Hardy, M. R., said: "I have no doubt that this is not an enemy company, but that it is an English company, a company which, like any Englishman, may with reference to particular contracts and particular acts render itself liable to the provisions of the Proclamations or to the provisions of the common law in such cases; but that does not turn it into an enemy company any more than an imprudent act of that nature by an admitted Englishman would make him an alien enemy. Then it is said that the only business of the company is to work and develop and carry on rubber plantations which are situate in German East Africa. In the first place, there is no proof that that is their only business. When you look, as we are entitled to look,—and indeed it is necessary for this purpose to do so—at the memorandum and articles of association, it is quite clear that that is not the only business which the company is entitled to carry on. I should hesitate once or even twice before I held that the mere fact that an English company was doing business in an enemy country up to the outbreak of war and had a commercial agent there made it an alien enemy. The fact that there are a number of companies—many of them foreign companies no doubt—which have commercial agents in countries in all parts of the world where they do business renders, I think, such a contention quite untenable. Is every English company which has a commercial agent in Germany or Austria or Turkey by that one circumstance constituted an enemy company and incapable of suing? I think the answer to that proposition is too plain to require much elaboration."

Warrington, L. J., said: "I am of the same opinion. The only question we have to determine is whether the company, one of the joint creditors preferring the proof against the estate of the bankrupt, is an alien enemy within the meaning of the rule which prohibits a person bearing that character from instituting or carrying on proceedings in the courts of this country during the continuance of the war, and I cannot help thinking that a good deal of the trouble which has arisen has been caused by confusing that question with one of a totally different character, namely, whether a person resident in this country, and therefore not an alien enemy within the rule that I have mentioned, is carrying on business in an enemy country and therefore infringing the rules of the common law against trading with the enemy, which is another question altogether.

The only question, as I have said, which we have to determine is whether this company is an alien enemy—that is to say, is the company resident in this country or is it a company resident in an enemy country? . . . The property of the company, that which produces its profits or causes it to incur losses as the case may be, is a rubber plantation situate in German East Africa and therefore in enemy territory, and it is said that prior to the outbreak of war this company had an agent whose business it was, no doubt under the control of the directors here in London, to see to the cultivation and management of that estate and to provide for the export of the produce. It is said, therefore, that this company was carrying on business in an enemy country. In my opinion that question is really irrelevant to the question which we have to decide. A person physically resident in this country may be possessed of property in the enemy country, and it may be that the cultivation and management of that property may really constitute the business which he is carrying on. But that does not make him an alien enemy, nor does it make the company which is otherwise shown to be resident in this country assume an enemy character. It may be that the natural person or the company may bring itself within the rules against trading with the enemy. That is another matter altogether, and, as I have said, I think that a good deal of confusion—if I may say it with all respect—has arisen in the mind of the learned judge through not distinguishing between the two questions which seem to me to be quite distinct, namely whether a person is an alien enemy and whether a person not an alien enemy is trading with the enemy."

Scrutton, L. J., said: "A company may be carrying on business in several countries one of them an enemy country. A case may arise where the claim has nothing whatever to do with the enemy country, and it may be said 'You are in fact in one of your capacities carrying on business in an enemy country though not in the one with which we are concerned, but that prevents you from making any claim anywhere.' I think such difficulties may very easily arise, but in this case I think no difficulty arises at all, because there is no evidence whatever before the Court that this company is in any worse position than that of an Englishman who at the outbreak of war had property in an enemy country and who is not proved to have done anything whatever with regard to that property since."

It is to be noted that as pointed out in the opinion of the Master of the Rolls and of Warrington, L. J., the sole question was whether the company was an alien enemy within the rule prohibiting alien enemies from appearing as plaintiff in an English court. The American Act, however, goes much farther, and expressly declares such corporations not to be enemies within the rules governing trading with the enemy. It, therefore, permits trading with such corporations, and all of its branches, including branches in enemy territory.

Domestic corporations under enemy control.

The use of the words "incorporated within any country other than the United States" also prevents any question arising as to the status of any corporation incorporated in the United States whose directors or shareholders may be enemies within the Act. This purpose is set forth by Assistant Attorney-General Warren (Hearings before Sub-Committee—on H. R. 4960, 189): "We have specifically abstained in the bill from attempting to go behind the corporate charter. If the corporation is an American corporation then it can do business in this country. . . . In England they attempted to go behind the charter of an English corporation and they attempted to hold that an English corporation which was controlled by German stockholders, was an enemy within the purview of their Act, and they landed in inextricable confusion. . . . Here we have solved that by saying we will not go behind the corporate charter, no matter how many German stockholders there may be."

The view announced in the Act is in conformity with the American decisions. The leading case is Society for the Propagation of the Gospel *v.* Wheeler (1814), 2 Gall. 105, F. C. No. 13,156, where Story, Circ. J., says: "It is certainly true, that as to individuals, their right to sue in the courts of a belligerent, or to hold or enforce civil rights, depends not on their birth and native allegiance, but on the character, which they hold at the time when these rights are sought to be enforced. . . . In this respect, a corporation, authorized by its charter to carry on a trade, and established in the hostile country, such as the East India Company, would undoubtedly be held, as to its property, within the same rule, even admitting its members possessed a neutral domicil. . . . Where a corporation is established in a foreign country, by a foreign government, it is undoubtedly an alien corporation, be its members who they may; and if the country become hostile, it may, for some purposes at least, be clothed with the same character. . . . It may therefore acquire rights, and be subject to disabilities, arising from the country, if I may so express myself, of its domicil. And, indeed, upon principle or authority, it seems to me difficult to maintain, that an aggregate corporation, as for instance an insurance company, a bank, or a privateering company, established in the enemy's country, could, merely from its being an invisible intangible thing, a mere incorporeal and legal entirety, be entitled to maintain actions, to enforce rights, acquire property or redress wrongs, when its own property on the ocean would be good prize of war. If the reason of the rule of the disability of an alien enemy be, as is sometimes supposed, that the party may not recover effects, which, by being carried hence, may enrich his country, that reason applies as well to the case of a corporation, as of an individual, in the hostile country. If the reason be, as Lord Chief Justice Eyre in Sparenburgh *v.* Bannatyne, 1 Bos. & P. 163, asserts it to be, that a man professing himself hostile to our country, and in a state of war with it, cannot be heard, if he sue for the benefit and protection of our laws, in the courts of our country, that reason is not less significant in the case of a foreign corporation, than of a foreign individual, taking advantage of the protection, resources and benefits, of the enemy's country. In point of law, they stand upon the same footing. . . . Let us now advert to the second objection, which is, that the members of the corporation are all alien enemies. In the writ, it is expressly alleged, that all the members are aliens and subjects of the King of the United Kingdom of Great Britain and Ireland. It does not however hence necessarily follow, that they are alien enemies. This averment in the writ was proper, if not indeed indispensable, in order to sustain the jurisdiction of this court; for the corporation, as such, might perhaps have no authority whatsoever to maintain an action here, under the limited jurisdiction confided by the constitution of the United States to their own courts. But in the character of its members, as aliens, we have incontestable authority to enforce the corporate rights; and it has been solemnly settled by the Supreme Court, that for this purpose the court will go behind the corporate name, and see who are the parties really interested. Bank of United States *v.* Deveaux, 5 Cranch (9 U. S.), 61. And if, for this purpose, the court will ascertain who the corporators are, it seems to follow, that the character of the corporators may be averred, not only to sustain, but also to bar, an action brought in the name of the corporation. It might therefore have been pleaded in this case, even if the corporation had been established in a neutral country, that all its members were alien enemies; and upon such a plea, with proper averments, it would have deserved great consideration, whether it was not, *pendente bello*, an effectual bar. Where the corporation is established in the enemy's country, the plea would *a fortiori* apply."

That domestic corporations controlled by enemy directors or shareholders may be considered as enemies was the view of Isaac, J., in Welsbach Light Company of Australasia, Ltd., *v.* Commonwealth (High Court, 1916), 22 Com. L. R. 268: "Its corporate character is the mechanism, the living forces that control it are hostile." But in Amorduct Mfg. Company, Ltd. *v.* Defries & Company (1914), 31 T. L. R. 69, it was held that a limited company registered in England may sue, although almost all of the shares were held by alien enemies. Latifi, Effect of War on Property, 56, while holding that, in general, war does not affect the existence of a corporation, says that where the law of the State of charter requires a certain minimum number of shareholders, the meaning of the provision is "effective shareholders" capable of influencing the policies of the corporation, and that as enemy shareholders cannot be counted towards making up the number, a winding-up must take place. This view does not seem to have been suggested in cases during the present war, where the facts might have warranted it.

The leading case is Continental Tyre and Rubber Company (Great Britain), Ltd. *v.* Daimler Company, Ltd. [1915] 1 K. B. 893. The plaintiff company was incorporated in England where its business was carried on and where its registered office was located. Of the shares of the company, 24,999 were held by German subjects who resided in Germany. The remaining one share was registered in the name of the secretary of the company, a naturalized British subject residing in London. All of the directors were subjects of the German Empire residing in Germany. The business was managed by two managers and a secretary residing in England. On behalf of the defendants, it was contended that under the circumstances, the plaintiff should be regarded as an alien enemy, and that consequently the plaintiff was not entitled to sue and that any payment to plaintiff would amount to a trading with the enemy under the existing laws. It was further contended that there was no person competent to bring suit on behalf of plaintiff.

In the Court of Appeal, Lord Reading, C. J., delivering the opinion of the court says: "It cannot be disputed that the plaintiff company is an entity created by statute. It is a company incorporated under the Companies Acts and therefore is a thing brought into existence by virtue of statutory enactment. At the outbreak of war it was carrying on business in the United Kingdom; it had contracted to supply goods, it delivered them, and until the outbreak of the war it was admittedly entitled to receive payment at the due dates. Has the character of the company changed because on the outbreak of war all the shareholders and directors resided in an enemy country and therefore became alien enemies? Admittedly it was an English company before the war. An English company cannot by reason of these facts cease to be an English company. It remains an English company regardless of the residence of its shareholders or directors either before or after the declaration of war. Indeed it was not argued by Mr. Gore-Browne that the company ceased to be an entity created under English law, but it was argued that the law in time of war and in reference to trading with the enemy should sweep aside this 'technicality' as the entity was described and should treat the company not as an English company but as a German company and therefore as an alien enemy. If the creation and existence of the company could be treated as a mere technicality, there would be considerable force in this argument. It is undoubtedly the policy of the law as administered in our courts of justice to regard substance and to disregard form. Justice should not be hindered by mere technicality, but substance must not be treated as form or swept aside as technicality because that course might appear convenient in a particular case. The fallacy of the appellants' contention lies in the suggestion that the entity created by statute is or can be treated during the war as a mere form or technicality by reason of the enemy character of its shareholders and directors. A company formed and registered under the Companies Acts has a real existence with rights and liabilities as a separate legal entity. It is a different person altogether from the subscribers to the memorandum or the shareholders on the register (per Lord Macnaghten in Salomon *v.* Salomon & Co. [1897] A. C. 22). It cannot be technically an English company and substantially a German company except by the use of inaccurate and misleading language. Once it is validly constituted as an English company it is an artificial creation of the Legislature and it retains its existence for all intents and purposes. It is not a mere name or mask or cloak or devise to conceal the identity of persons and it is not suggested that the company was formed for any dishonest or fraudulent purpose. It is a legal body clothed with the form prescribed by the Legislature. In determining whether a company is an English or foreign corporation no inquiry is made into the share register for the purpose of ascertaining whether the members of the company are English or foreign. Once a corporation has been created in accordance with the requirements of the law it is an English company notwithstanding that all its shareholders may be foreign. . . . The same result is arrived at under paragraph 3 of the above mentioned Proclamation. It defines 'enemy' in paragraph 3. 'The expression "enemy" in this Proclamation means any person or body of persons of whatever nationality resident or carrying on business in the enemy country, but does not include persons of enemy nationality who are neither resident nor carrying on business in the enemy country. In the case of incorporated bodies, enemy character attaches only to those incorporated in an enemy country.' Therefore although payment is forbidden 'to or for the benefit of an enemy' this prohibition does not apply when payment is made to a company incorporated in this country. . . . It is to be observed that if payment to a company would be payment 'to or for the benefit of an enemy' because all the shareholders are enemies and because payment to the company must be regarded as payment to the shareholders it would seem to follow that payment of a debt to a company which had some enemy shareholders would equally come within the forbidden area. The appellants' answer is that their contention extends at most to those companies in which enemy shareholders are in the majority and in such circumstances as would lead to the conclusion of fact that substantially the company is enemy. Further if this contention were rejected it is urged that when as in the present case all the shareholders and directors are enemies there is no room for doubt as to the fact and a decision in the appellants' favour could be confined to the special facts. There does not appear to be any logical ground for these distinctions. If it were permissible to look behind the existence of the entity and to regard the character of the individual shareholders in order to determine whether or not the payment is 'to or for the benefit of an enemy' the suggested line of demarcation would be wholly arbitrary. If payment to a company with a majority of enemy shareholders is to be regarded as payment to an enemy company, what is the position of the other shareholders? Can it be suggested that the minority consisting of British or neutral shareholders cease to be shareholders in an English company and become members of an enemy corporation?"

This view was concurred in by four of the Justices. Buckley, L. J., dissenting says: "The artificial legal entity created by incorporation under the Companies Acts is a legal person existing apart from its corporators. This proposition is true without exception, and nothing in this judgment questions the proposition in any way. If there be twelve corporators one of them is not a twelfth or any part of the corporation. The total number of twelve do not in the aggregate constitute the corporation. On the other hand the corporation cannot exist without corporators. If there are no corporators there can be no corporation. Corporators are essential to the existence of but form no part of the corporation. The artificial legal person called the corporation has no physical existence. It exists only in contemplation of law. It has neither body, parts, nor passions. It cannot wear weapons nor serve in the wars. It can be neither loyal nor disloyal. It cannot compass treason. It can be neither friend nor enemy. Apart from its corporators it can have neither thoughts, wishes, nor intentions, for it has no mind other than the minds of the corporators. . . . This corporation is one which as a corporation certainly has in law an inindependent legal existence and that legal person is British. But on the other hand all its directors are Germans resident in Germany. The holders of all its 25,000 shares except one share are Germans resident in Germany. The artificial legal thing is British, resident in England. But all its corporators who can have thoughts, wishes, or intentions are Germans resident in Germany. The question for determination is whether when all the natural persons who express and give effect to their wishes through the corporation as a legal abstraction are Germans resident in Germany the corporation can sue in this country because those persons who could not sue are as matter of law absorbed in a separate legal person which is British and which (regarding the corporation as a legal person existing apart from and irrespective of its corporators) can sue."

The case was appealed to the House of Lords, Daimler Company, Ltd. *v.* Continental Tyre & Rubber Co. (Great Britain), Ltd. [1916] 2 A. C. 307. The decision of the Court of Appeal was reversed. It was held by all of the judges that the action was commenced without authority and should, therefore, be struck out. Upon the further question as to whether the company should itself be regarded as an enemy, there was a great diversity of opinion. The Earl of Halsbury took the view that the company was in substance a hostile partnership and that any payment to it would be illegal as a trading with the enemy. "Under these circumstances it becomes material to consider what is this thing which is described as a 'corporation.' It is, in fact, a partnership in all that constitutes a partnership except the names, and in some respects the position of those who I shall call the managing partners. No one can doubt that the names and the incorporation were but the machinery by which the purpose (giving money to the enemy) would be accomplished. The absence of the authority to issue the writ is only a part of the larger question."

Lord Atkinson pressed the point of no authority in the secretary. "The burden of proving that the secretary had power and authority to institute the present action some months after the outbreak of the war rested on the respondent company. I am clearly of opinion that they have not discharged that burden. I do not think Lush, J., had evidence before him sufficient to support his finding on this point; but, even if I thought otherwise, I should still hold that, in the absence of a clear consent to be bound by his findings thus come to in a suit to which the appellants were no parties, that finding was not binding upon them. I do not find any clear consent of that kind in the present case. I think this appeal should be allowed. Having formed this opinion, I do not desire to express any opinion on the other and main point raised in the case further than to say that, the question of residence of the company apart, I do not think that the legal entity, the company, can be so completely identified with its shareholders, or the majority of them, as to make their nationality its nationality or their status its status, or it an alien enemy because they are alien enemies, or to give it an enemy character because they have that character. I think the judgment of Lord Macnaghten in Janson *v.* Driefontein Consolidated Mines ([1902] A. C. 497) is inconsistent with any such view. . . . I think it is much to be regretted that the appellant company were not permitted to defend, as in my opinion they should have been, so that all the facts might have been elicited, and it could be determined whether the company resides and trades in Germany or not."

Lord Parker of Waddington with the concurrence of Viscount Mersey, Lord Kinnear and Lord Sumner took the view that such a company carrying on business in England or in a neutral country by properly authorized agents is *prima facie* to be regarded as a friend, but that such company will assume an enemy character if its agents or the persons *de facto* in control of its affairs are resident in an enemy country, or wherever resident, are adhering to the enemy, or taking instructions from or acting under the control of enemies. But the character of the individual shareholders does not of itself affect the character of the company, but may be material on the question whether the company's agents are in fact under enemy control. They further were of opinion that a company incorporated in the United Kingdom but carrying on business in an enemy country, is to be regarded as an enemy.

Lord Parker in the course of his opinion says: "When the action was instituted all the directors of the plaintiff company were Germans resident in Germany. In other words, they were the King's enemies, and as such incapable of exercising any of the powers vested in them as directors of a company incorporated in the United Kingdom. They were incapable, therefore, of authorizing the institution of this action. The contention that the secretary of the company could authorize such institution is untenable. The resolution by which he was appointed secretary would confer on him such powers only as were incident to the performance of his secretarial duties. It is true that the directors of the company might by a proper resolution in that behalf have conferred on him a power to authorize the institution of proceedings in the company's name, but they did not do so. Their conduct in holding him out as a person having this power, if they in fact so held him out, may in particular cases have operated to estop the company from denying the authority of a solicitor whom he retained, but it could not confer the power in question. It follows that this action was instituted without authority from the company, and in my opinion the Court having notice of the fact should have refused relief. . . . My Lords, I think that the analogy is to be found in control, an idea which, if not very familiar in law, is of capital importance and is very well understood in commerce and finance. The acts of a company's organs, its directors, managers, secretary, and so forth, functioning within the scope of their authority, are the company's acts and may invest it definitively with enemy character. It seems to me that similarly the character of those who can make and unmake those officers, dictate their conduct mediately or immediately, prescribe their duties and call them to account, may also be material in a question of the enemy character of the company. If not definite and conclusive, it must at least be *prima facie* relevant, as raising a presumption that those who are purporting to act in the name of the company are, in fact, under the control of those whom it is their interest to satisfy. Certainly I have found no authority to the contrary. Such a view reconciles the positions of natural and artificial persons in this regard, and the opposite view leads to the paradoxical result that the King's enemies, who chance during war to constitute the entire body of corporators in a company registered in England, thereby pass out of the range of legal vision, and, instead, the corporation, which in itself is incapable of loyalty, or enmity, or residence, or of anything but bare existence in contemplation of law and registration under some system of law, takes their place for almost the most important of all purposes, that of being classed among the King's friends or among his foes in time of war. What is involved in the decision of the Court of Appeal is that, for all purposes to which the character and not merely the rights and powers of an artificial person are material, the personalities of the natural persons, who are its corporators, are to be ignored. An impassable line is drawn between the one person and the others. When the law is concerned with the artificial person, it is to know nothing of the natural persons who constitute and control it. In questions of property and capacity, of acts done and rights acquired or liabilities assumed thereby, this may be always true. Certainly it is so for the most part. But the character in which property is held, and the character in which the capacity to act is enjoyed and acts are done, are not *in pari materia.* The latter character is a quality of the company itself, and conditions its capacities and its acts. It is not a mere part of its energies or acquisitions, and if that character must be derivable not from the circumstances of its incorporation, which arises once for all, but from qualities of enmity and amity, which are dependent on the chances of peace or war and are attributable only to human beings, I know not from what human beings that character should be derived, in cases where the active conduct of the company's officers has not already decided the matter, if resort is not to be had to the predominant character of its shareholders and corporators. So far as I can find, this precise question has been asked heretofore once and once only, namely, in argument in the case of Bank of United States *v.* Deveaux (1809), 9 U. S. (5 Cranch) 61, 81. . . .

"My Lords, having regard to the foregoing considerations, I think the law on the subject may be summarized in the following propositions:

"(1.) A company incorporated in the United Kingdom is a legal entity, a creation of law with the status and capacity which the law confers. It is not a natural person with mind or conscience. To use the language of Buckley, L. J., 'it can be neither loyal nor disloyal. It can be neither friend nor enemy.'

"(2.) Such a company can only act through agents properly authorized, and so long as it is carrying on business in this country through agents so authorized and residing in this or a friendly country it is *prima facie* to be regarded as a friend, and all His Majesty's lieges may deal with it as such.

"(3.) Such a company may, however, assume an enemy character. This will be the case if its agents or the persons in *de facto* control of its affairs, whether authorized or not, are resident in an enemy country, or, wherever resident, are adhering to the enemy or taking instructions from or acting under the control of enemies. A person knowingly dealing with the company in such a case is trading with the enemy.

"(4.) The character of individual shareholders cannot of itself affect the character of the company. This is admittedly so in times of peace, during which every shareholder is at liberty to exercise and enjoy such rights as are by law incident to his status as shareholder. It would be anomalous if it were not so also in a time of war, during which all such rights and privileges are in abeyance. The enemy character of individual shareholders and their conduct may, however, be very material on the question whether the company's agents, or the persons in *de facto* control of its affairs, are in fact adhering to, taking instructions from, or acting under the control of enemies. This materiality will vary with the number of shareholders who are enemies and the value of their holdings. The fact, if it be the fact, that after eliminating the enemy shareholders the number of shareholders remaining is insufficient for the purpose of holding meetings of the company or appointing directors or other officers may well raise a presumption in this respect. For example, in the present case, even if the secretary had been fully authorized to manage the affairs of the company and to institute legal proceedings on its behalf, the fact that he held one share only out of 25,000 shares, and was the only shareholder who was not an enemy, might well throw on the company the onus of proving that he was not acting under the control of, taking his instructions from, or adhering to the King's enemies in such manner as to impose an enemy character on the company itself. It is an *a fortiori* case when the secretary is without authority and necessarily depends for the validity of all he does on the subsequent ratification of enemy shareholders. The circumstances of the present case were, therefore, such as to require close investigation and preclude the propriety of giving leave to sign judgment under Order XIV, r. 1.

"(5.) In a similar way a company registered in the United Kingdom, but carrying on business in a neutral country through agents properly authorized and resident here or in the neutral country, is *prima facie* to be regarded as a friend, but may, through its agents or persons in *de facto* control of its affairs, assume an enemy character.

"(6.) A company registered in the United Kingdom but carrying on business in an enemy country is to be regarded as an enemy. . . .

"I see no reason why the trustee of an English business with enemy *cestuis que trustent* should not during the war continue to carry on the business, although after the war the profits may go to persons who are now enemies, or why moneys belonging to an enemy but in the hands of a trustee in this country should not be paid into Court and invested in Government stock or other securities for the benefit of the persons entitled after the war. The contention appears to me to extend the principle on which trading with the enemy is forbidden far beyond what reason can approve or the law can warrant. In early days the King's prerogative probably extended to seizing enemy property on land as well as on sea. As to property on land, this prerogative has long fallen into disuse. Subject to any legislation to the contrary or anything to the contrary contained in the treaty of peace when peace comes, enemy property in this country will be restored to its owners after the war just as property in enemy countries belonging to His Majesty's subjects will or ought to be restored to them after the war. In the meantime it would be lamentable if the trade of this country were fettered, business shut down, or money allowed to remain idle in order to prevent any possible benefit accruing thereby to enemies after peace. The prohibition against doing anything for the benefit of an enemy contemplates his benefit during the war and not the possible advantage he may gain when peace comes."

Lord Shaw of Dunfermline agreed with the Court of Appeal that there was no trading with the enemy, and based his own judgment on the lack of authority of the secretary. "A company registered in Britain may have shareholders and directors who are alien enemies. Transactions or trading with any one of them becomes illegal. They have no power to interfere in any particular with the policy or acts of companies registered in Britain; alien enemy shareholders cannot vote; alien enemy directors cannot direct; the rights of all these are in complete suspense during the war. As to shareholders or directors who are not alien enemies, they stand *pendente bello* legally bereft of all their coadjutors who are. And, if the company be a company registered in Great Britain, they must face the situation thus created by adopting the courses suitable either under the Companies Acts or the recent legislation. In this way, while no payments of assets, dividends, or profits can be made to alien enemy shareholders, yet the property and business of the company may be conserved. There may be loss consequent on commercial dislocation, but neither loss nor forfeiture is imposed by the law. The law is completely satisfied if in the conduct and range of the business trading with the enemy is avoided. To put in a word one plain instance: All British trading by the company is still permitted if there are British shareholders who can carry it on. With much respect I see no advantage to be gained, but much confusion to result, from proceeding to a further stage and treating or even characterizing British registered companies as either alien enemies or companies with an alien enemy character. As stated, all the enemy shareholders' rights being placed in suspense and all trading with these shareholders or with any other enemy being interpelled, there is no principle of law which would, in my humble opinion, justify the incongruity of denominating or regarding the company itself as enemy either in character or in fact. . . . Further, it appears to me to be equally unsound for a court of law to announce that, notwithstanding all those statutory provisions, the law of the land is such that the shareholding of a company incorporated in England has to be investigated, and trading with it is forbidden, if the substantial majority of shares is found to be, say, German. Such an operation would write out a large portion of the statute. It would render meaningless the particular proviso which declared that enemy character attached only to companies incorporated in an enemy country. It is also fairly clear that, under the word 'substantially,' every kind of inquiry would have to be made an individual instance—say, for instance, as to whether there were enough of alien enemy shareholders to make it an alien enemy company; as to whether a majority would determine the matter, with the possible result of seriously injuring large minorities of British shareholders; and, indeed, whether a company whose shares might be transferred from day to day stood to change into and out of its character as an alien enemy in consequence of the change of personnel in its shareholders. My Lords, such results would necessarily follow from upsetting the plain announcement of the statute which makes British incorporation settle high or low that the company so incorporated is not 'enemy.' . . . I do not detain your Lordship with what I think to be the extraordinary argument that if assets are realized and a business kept up, enemy shareholders of an English company will, at the end of the war, be benefited. Possibly they may. It is true enough that on the other argument both they and the English shareholders might enormously suffer: so that a species of indirect pillage seems to be involved—pillage first of the enemy and secondly of English shareholders—thus presumably penalized for their association with others. I must respectfully decline to admit the validity of any argument of the kind. I may, however, further point out that if the statute and Proclamation be construed as the Court of Appeal have, I think, very rightly construed them, the results *post bellum* would be results depending upon the state of British legislation and of the terms of peace."

Lord Parmoor also took the view that the company had no enemy character, but that there was no authority in the secretary to bring the action. "A company incorporated under the Companies Acts has a continued existence, irrespective of the shareholders for the time being on the register. It is a legal person or entity, which comprises not only these shareholders, but their predecessors and successors. It has a right to sue, and a liability to be sued, in the corporate name. It possesses powers and is subject to obligations distinct from those of the shareholders for the time being on the register, acting either individually or in their collective capacity. I see no reason why the word 'nationality' may not be properly applied to a corporate body. The nationality of such a body is wholly distinct from that either of a majority or of the whole number of shareholders for the time being on the register. The contention of the appellants is that when, at the outbreak of war, the shareholders on the register of a British company, carrying on business within the United Kingdom, are wholly or largely alien enemies, the company loses the right, which it would otherwise have, to sue in the British Courts. My Lords, I do not think that this contention is well founded, and agree in this respect with the opinion expressed by Lord Shaw. The company, after the outbreak of war, does not lose the status of a company registered in this country. If there is an agent duly appointed, who may or may not be a shareholder, the outbreak of war does not *per se* terminate the agency, and the company is liable to be sued in respect of obligations and is enabled to sue to enforce its rights. In other words, the company still owes obedience to the laws of this country and is entitled to their protection. . . . I do not doubt the proposition that a company, registered in this country, would, if proved to be carrying on its business, through its agent or agents, in an enemy country, become enemy in character. I draw no distinction in this respect between a British company and a British-born subject. The enemy character would be the same, though every shareholder and every director was a British-born subject. In the present case there is no evidence that, since the outbreak of the war, the respondents have carried on business in an enemy country. In the absence of such evidence the respondents have the same right of access to the courts as any other

British subject or subject of a friendly state, and if it is relevant to clothe the company with a nationality, this nationality was British."

Phillipson, International Law and the Great War, 107, 108, thinks that the opinion of Buckley, L. J., in the Court of Appeal represents the more rational view; but the generally accepted view in England is to the contrary. It is to be specially noted that the decision of the House of Lords is an authority only on the point that on the facts of the case, the secretary had no authority to bring the action. The decision is not an authority either way upon the point whether an enemy-controlled company is an enemy under the acts and proclamations or for other purposes. All statements in the opinion upon this point are dicta. The French courts hold that companies incorporated in France and having enemy directors and shareholders are not enemies. Rouen (1st Chambre) November 2, 1915, Clunet, Jour. de droit int. (1916) 253. It has also been held that a company incorporated in a foreign country (Brazil) and having enemy directors and shareholders was not an enemy company. Rouen (1st Chambre), January 19, 1916, Gaz. des trib., March 30, 1916.

The question has also come up before the American courts, and the view of Lord Reading, C. J., in the Court of Appeal adhered to. In Fritz Schultz, Jr., Co. *v.* Raimes & Co. (1917), 99 Misc. (N. Y.) 626, 164 N. Y. Supp. 454, decided before the Act, McAvoy, J., says: "Any interdiction against the prosecution of suits for the collection of debts by an alien enemy does not affect the plaintiff here, since, notwithstanding its practical control and ownership by the German corporation or the German citizens in control thereof, the law of this State, I maintain, holds the corporate body as a distinct entity from the alien owners of its stock, and consequently, though of foreign ownership, it is a citizen of the State of New Jersey and entitled to the privileges and immunities of all citizens of the United States. This argument seems sound according to the legal logic of our corporate law and its development. Obviously such claims are open to the use of the cloak of subterfuge against the enforcement of acts or proclamations designed to prevent the giving of aid or comfort to the enemy by means of moneys or things of value. But, if so, the proclamation containing the interdiction of non-intercourse between our citizens and those of the alien enemy must be strictly worded to accomplish the prevention of such an usage. It is claimed by the plaintiff that this company is an American company for all intents and purposes in peace and war. The defendant admits that it is an American company in time of peace, but says that in time of war they are not to be barred by technicalities from showing its German constitution. This proposition is devoid of authority. The status of the plaintiff company remains unaffected by a state of war. In no recognized authority on international law or in the writings of any jurisconsults or publicists who have adverted to the subject is there any suggestion to the effect of the defendant's contention that a company is not an entity entirely apart from the nationality of its shareholders. In England, from which we derive many of our concepts of public law in relation to the conduct of war, it is held that the position of a company composed of foreign stockholders is not altered in time of war. . . . There, as here, it is undoubtedly the policy of the law to regard substance and to disregard form, to prevent the hindrance and hampering of justice by mere technicality, but it is equally true in this State, as in the United Kingdom, that substance must not be treated as form or swept aside as technicality because that course might appear convenient in a particular case. It is an obvious fallacy that an entity created by statute is or can be regarded during the war as a mere form or character because of the enemy character of its directors. Corporations, organized under our law, have a real existence with separate rights and liabilities as legal entities. They differ in person and in substance from the subscribers, shareholders and directors. This corporate body, organized in New Jersey and operating, pursuant to the protection of its laws and entitled to all the franchises and rights involved in its corporate existence, cannot be technically an American company and substantially a German company, except by the use of inaccurate and misleading language. It is not a mere name or mark or cloak or device to conceal the identity of persons, and it is not suggested that the company was formed for any dishonest or fraudulent purpose. It is a legal body clothed with the form prescribed by our legislature. The consideration applicable to the decision in that case, Continental Tyre & Rubber Co., Ltd. *v.* Daimler Co., Ltd. [1915] 1 K. B. 893, and the facts and circumstances of the alienation of the shareholders and directors are similar to the incidents of persons in this case, and the facts here are more favorable to the corporate body suing as a plaintiff. I find the high authority thus expounded by the Chief Justice of England, while not binding upon courts in this country, entitled to the highest respect and follow it unreservedly. While this judgment of the Court of Appeal was reversed in the House of Lords and Privy Council in June, 1916 (2 App. Cases, 1916, p. 307), yet as the earlier opinion is in entire harmony with our law as laid down in Society for the Propagation of the Gospel *v.* Wheeler (1814), 2 Gall. 105, F. C. No. 13,156, I believe that the trial court should adhere to that which conforms to our own judicial holdings."

The case was appealed to the Supreme Court, Appellate Term, Fritz Schultz, Jr. Co. *v.* Raimes & Co. (1917), 100 Misc. (N. Y.) 697, where

Lehman, J., says: "The plaintiff in this case is a corporation organized under the laws of New Jersey, and unless such a corporation can be considered a resident or adherent of an enemy country the usual disabilities of alien enemies cannot affect the present plaintiff's right of access to our courts. The case presents the interesting question whether a corporation organized under the laws of one of the States of this country, but owned principally by alien enemies living in Germany, is to be precluded during the war from access to our courts. The corporation being organized under the laws of New Jersey, can of course, be an alien enemy only if our courts have a right to look behind the corporate entity and to determine the character of the corporation by the residence and character of its members."

After a discussion of the case of Daimler Company, Ltd. *v.* Continental Tyre & Rubber Company, he says in reference to this case: "In the present case the learned justice below has decided that the courts of this country should follow the decision of the Court of Appeal rather than the decision of the House of Lords on the ground that it is in line with our public policy and decisions, especially with the decision in the case of Society for the Propagation of the Gospel against Wheeler (22 Fed. Cases, p. 756, Case No. 13,156). In that case Mr. Justice Story, sitting as Circuit Justice, wrote an opinion in which he decided that a British corporation with British stockholders might have a right even during the war of 1812 to sue in the courts of this country, but his decision is based entirely upon a technical point of pleading, and the opinion itself is certainly no authority for the view that a domestic corporation composed of alien enemy members cannot be an alien enemy itself. In fact, when the Daimler case was decided in the English Court of Appeal, Bulkley, J., dissented from the prevailing opinion written by Lord Reading, and he cited as authority for his views the opinion of Mr. Justice Story in this case. It is true that Justice Story did sustain the jurisdiction of the court in spite of the fact that the writ averred that all the members of the corporation were 'subjects of the King of the United Kingdom of Great Britain and Ireland' but he so decided only on the ground that such averments as pleaded did not necessarily show that the members were actually attached to the enemy or resident in enemy territory, and he could reach the conclusion that a British corporation could sue in our courts while we were at war with Great Britain only by holding that the residence or national character of a corporation was not fixed by its place of incorporation, but that the courts may determine the character of the corporation from the character of its members."

After quoting from the opinion of Mr. Justice Story in the case of

Society for the Propagation of the Gospel *v.* Wheeler, he continues: "It is to be noted, however, that the opinion in Society for the Propagation of the Gospel *v.* Wheeler (*supra*), rests upon the authority of the decision of Chief Justice Marshall in Bank of the United States *v.* Deveaux, 5 Cranch, 61, and it would seem that the authority of that case has been much limited, if not overruled, by subsequent cases and at the present time the courts of this country are entirely wedded to the doctrine that the corporators of a corporation are conclusively presumed to be citizens of the same State as the corporation." After a review of the American authorities, he continues: "Throughout all these decisions the courts have indicated practically unanimously that they regard a corporation as an entity separate and apart from its corporators; that its domicile is as a matter of law within the State of its creation, and that the courts will not regard it merely as an association of individuals or regard the domicile or character of the corporators as affecting the domicile or character of the corporation. It may be that where a corporation is composed entirely of alien enemies residing in an enemy country a situation will arise requiring the interposition of a receiver or conservator to take charge of the corporate affairs, because none of the members can legally deal with the corporation or actually manage its affairs; it may be that a corporation will be unable to distribute its profits for the same reason. So long, however, as a corporation created by any State still has legal existence and officers or agents with authority to do business or to bring actions, it cannot be deprived of access to the courts for the protection of its legal rights. In so far as the House of Lords has announced a different rule in the Daimler case, it is not in accordance with the decisions of our courts nor with the powers of the individual State to regulate the proceedings and powers of the corporations which it creates. Even that decision, however, is not real authority for the contention of the defendant in this case."

After giving the summary of Lord Parker's opinion in the Daimler case (see *supra*, p. 73), he concludes: "It is to be seen that in these propositions the character of the individual shareholders cannot of itself affect the character of the company and that a company can assume character only when its agents or the persons in *de facto* control, whether authorized or not, are resident in the enemy country, are adhering to the enemy or taking instructions from or acting under the control of enemies. In the case before us three of the four directors including the managing director, are residents in this country, and the corporation, therefore, is clearly within the control of residents. In considering the importance of this factor it must be remembered that the disability of alien enemies is not a prohibition against dealings with all of enemy nationality, but is a prohibition against those who reside and do business in the enemy country."

The decision in this case was approved and distinguished in Stumpf *v.* A. Schreiber Brewing Co. (1917), 242 Fed. 80. See also Posselt *v.* D'Espard (N. J., 1917), 100 Atl. 893, more fully discussed, *infra*, p. 194.

Enemy governments.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

" Government."

Where the act is committed by a citizen of the United States, whether resident within the United States or in a foreign country, such act may also be a violation of the "Logan Act" of March 4, 1909, 35 St. L. 1088, c. 321, section 5, which provides: "Every citizen of the United States, whether actually resident or abiding within the same, or in any place subject to the jurisdiction thereof, or in any foreign country, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person, being a citizen of or resident within the United States or in any place subject to the jurisdiction thereof, and not duly authorized, counsels, advises, or assists in any such correspondence with such intent, shall be fined not more than five thousand dollars and imprisoned not more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects." Furthermore, such acts may be treason within the meaning of the United States Penal Code, sections 1, 2.

" Any officer, official, agent or agency."

The residence of such officer, official or agent is immaterial. The agents, etc., of any enemy government in the United States or in a neutral country are "enemies" within the meaning of the Act. And they are such not alone as regards transactions entered into by them in their representative capacity, but as regards all transactions. Furthermore, the nationality of such person is immaterial; e. g., a citizen of Mexico acting as a consular officer of the German Empire in Mexico, is an "enemy." Under the law as existing prior to the Act, dealings with a person not an enemy subject, residing in a neutral country, and there acting as an agent of an enemy government, were not prohibited where the transaction was in reference to matters not connected with his official position. In the Liverpool Packet (1813), 1 Gall. 513, F. C. No. 8406, Story, Circ. J., said: "It was certainly lawful, and perhaps highly meritorious in Mr. Sampayo, to act as an English commissary; and so long as he continued to act as a Portuguese merchant, and resided in Lisbon, I do not perceive how he would thereby lose his neutral character. No authority has been produced to show, that the mere transaction of business by a neutral merchant, for an enemy government, annihilates his neutral character. It may, under circumstances, afford a presumption of concealed enemy interests in property shipped by such merchant with a destination to the enemy country; but I should have been glad to have seen, in a distinct authority, a principle so broad and comprehensive, as that supposed in the argument." Prisoners of war may come under this head.

The prohibition does not apply to officials of neutral governments acting as the representatives of states with which the United States is at war or with which diplomatic relations have been severed; and this even as to acts performed by them as representatives of the enemy or ally of enemy states. Matter of White (1917), 100 Misc. (N. Y.) 393, 166 N. Y. Supp. 712.

The use of a license obtained from an enemy government or an agency thereof renders an American vessel using the same liable to confiscation. The Alexander (1814), 8 Cr. 169, 3 L. ed. 524; Converse *v.* Miller (1870), 33 Tex. 216.

President may extend classification.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

Under section 4, the President is empowered to prohibit any or all foreign insurance companies, including non-enemy companies not doing business in an enemy country, from doing business in the United States.

"Such other individuals . . as may be natives . . or any nation with which the United States is at war."

This class of individuals may be included under the term "enemy" by a Proclamation of the President. The provision adopts the views forming the basis of the English Trading with the Enemy Act of December 23, 1915. It empowers the President to declare any particular individual, or any body or class of individuals, to be enemies within the meaning of the Act, provided that such persons be either subjects of a nation with which the United States is at war, or were originally subjects of such nation but have acquired another nationality, other than American citizenship. Persons who are not natives or subjects of an enemy country may not be included within the term "enemy." The American Act is not as broad as the English Act which extends to persons of "enemy nationality or enemy association."

No such proclamation has been issued up to January 15, 1918. The Enemy Trading List, issued by the War Trade Board, is avowedly "a list of enemies and allies of enemies, and other persons, firms, and corporations, who there is reasonable ground to believe have acted, directly or indirectly, for, on account of, on behalf of, or for the benefit of enemies and allies of enemies." The power of the President to extend the classification of "enemies" and "allies of enemy" must be exercised by means of a proclamation, and may include only "natives, citizens, or subjects" of an enemy or ally of enemy country. It does not extend to citizens or subjects of friendly states, except persons who have acquired friendly nationality by naturalization, but are by birth of enemy or ally of enemy nationality. Furthermore, it does not extend to juristic persons existing under the laws of a friendly country, and this regardless of the enemy character of the shareholders or directors. In this connection it is to be noted that under the laws of some countries associations of individuals which according to the Anglo-American law are not endowed with juristic personality, are legal entities, distinct from their component members, and have the citizenship of the country under whose laws they are formed. Thus, a commercial partnership is a juristic person under Colombian law. See the criticism of the award. in Cerruti's Case (U. S. For. Rel. 1898, 245), by Pierantoni, in 30 Rev. de droit int. 460. As to citizenship of corporations, see Borchard, Diplomatic Protection, 617–630; Ralston, International Arbitral Law, 97–101; Schuster, in 2 Grotius Society, 57.

The President may, however, under section 7 (b) give notice to the effect that he has reasonable grounds to believe that any person is an enemy or ally of enemy, and proof of receipt of such notice is *prima facie* evidence that the person receiving such notice has reasonable cause to believe such other person to be an enemy or ally of enemy within the meaning of section 3 of the Act; and is also a *prima facie* defense to an action instituted by a plaintiff so named in a notice. But there are no powers, other than the ones just indicated to extend the classification of hostile persons, either generally as under section 2, or specially, as under section 7 (b). The notice provided for in section 7 (b) merely shifts the burden of proof, and is furthermore limited in its operation to subsection (a) of section 3, prohibiting trading, and to subsection (b) of section 7, relating to the plea of enemy alienage as a defense to a suit.

" Other than citizens of the United States."

This provision was put into the Act so as to leave no question as to the status of American citizens by naturalization, who by birth were subjects of a country with which the United States is at war. Under the English Act, there is no similar limitation.

" Wherever resident or wherever doing business."

The provision is intended to cover the case of persons of present enemy nationality or of enemy nationality by birth resident either in neutral countries or in countries at war with the Central Powers. It also covers the case of persons of enemy nationality resident within the United States. As to treaty provisions governing this matter, in the case of persons of German nationality, see *supra*, p. 38.

Statelessness.

A question likely to arise in case this subsection of the Act is put into operation, and which may also arise under other circumstances, is whether a person can be without nationality. Under the Act of Congress of March 2, 1907 (34 St. L. 1229), naturalized citizens of the United States who reside for five years in any foreign country or for two years in the country of which they were native, are presumed to have lost their American citizenship. In United States *ex rel.* Anderson *v.* Howe (1916), 231 Fed. 548, the relator, a native of Sweden, after naturalisation in the United States, returned to Sweden and lived there for more than two years. The court held that the person was to be considered as expatriated and an alien. In taking this view the court overrules an opinion of Attorney-

General Wickersham (1910), 28 Op. Atty.-Gen. 504 to the effect that the presumption under the Act of 1907 was merely to relieve the American Government of the duty of protecting naturalised citizens abroad after an absence of two or five years according to circumstances.

This ruling affects a large number of persons who became naturalized citizens of the United States, but have since their naturalization become expatriated. Are they to be regarded as having no nationality or as having reacquired either their nationality of birth or the nationality last possessed by them prior to their naturalization in the United States? The question may be further complicated by the provisions of the law of their former nationality, which may, as is the case in Germany and Austria, provide that absence for a certain period of time (Germany), or leaving the country without permit (Austria), brings about loss of nationality. The question as to the status of such persons came before the English Courts in Ex parte Weber [1916] 1 K. B. 280. The applicant was born in Germany in 1883. He left Germany in 1898 and after some years of residence in South America, he came to England where he resided since 1901, acting as cashier of the London office of a French firm. The applicant claimed that under the German Nationality Law of June 1, 1870, which provides that Germans who leave Germany and reside for ten years uninterruptedly abroad, *ipso facto* lose their nationality, unless certain acts required by the statute (and which were claimed not to have been complied with) were performed. In the Court of Appeal, it was held that in view of the provisions of the German Nationality Law of 1913, which gives to persons of German origin who have lost their nationality by absence from the country, certain rights in reference to the re-acquisition of German nationality, that the applicant had failed to establish the fact that he was not an alien enemy, and that he had ceased to be of German nationality. Phillimore, L. J., said: "The fact that by his residence out of Germany he is subjected to many disabilities and that his rights of protection are very incomplete does not, to my mind, make him other than a German for the purpose of this application, and therefore an alien enemy."

The case was appealed to the House of Lords [1916] 1 A. C. 421, where Lord Buckmaster, L. C., said: "It is well established that nationality is not lost merely by residence in another state, whether that residence be transient, or whether it be permanent, and I desire to say nothing upon the question as to whether or no this country will recognize a man as having no nationality; it may be a matter of great importance, and I do not think it necessarily arises for decision. I only desire to guard myself against appearing to assent to such a proposition. The real question here is whether the applicant has completely lost his German nationality. . . .

I am unable to see that the applicant has discharged the burden that is cast upon him of showing that he has so completely divested himself of German nationality that he can be treated, for the purposes of this application, as though he no longer remained a German citizen." Earl Loreburn said: "Until a man acquires a nationality other than that of his birth, it may be that he has not divested himself of the nationality of his birth, and that he cannot be a cosmopolitan. I do not desire to express any definite opinion upon that subject, because it is not necessary, and it is very undesirable to lay down broad propositions without full argument."

In Simon *v.* Phillips (1916), 114 L. T. 460, Simon claimed to be of no nationality. The facts were: Simon was born in 1869, at Coburg in the Duchy of Saxe-Coburg and Gotha. In 1887 he emigrated to America. In 1891 he obtained from the Government of Saxe-Coburg a discharge from the nationality of the Duchy. In 1894 he was naturalized in the United States of America. Later he came to England and had been employed in London for many years. There was no evidence that he had ever returned to Germany. It was admitted that since he had left the United States the presumption of expatriation from American nationality arose against him, so that the question was whether he had reverted to his German nationality of origin or was of no nationality. The magistrate held, that he had failed to prove that he had not reverted to his nationality of origin, and had not proved that he had lost the right to be re-admitted thereto, and that, as he was of German origin and not a citizen of the United States, he had failed to show that he was not a person on whom it was incumbent to register as an alien enemy and consequently Simon was fined. The Divisional Court dismissed the appeal, the Lord Chief Justice saying that the decision of the magistrate was a decision of fact and so not open to review.

It appears to be immaterial whether the loss of German citizenship was occasioned by absence for a specified number of years from Germany, as in the Weber case, or whether the person obtained a certificate of discharge of nationality, as in Simon *v.* Phillips. Cp. Rex *v.* Superintendent [1916] 1 K. B. 268.

"It will be observed that in both of the above cases (Ex parte Weber and Simon *v.* Phillips) the alien failed to prove that he had absolutely lost his nationality without possibility of reclaiming it, but there can be no doubt that if an alien could prove himself to be destitute of nationality, the English courts would recognize and act upon this." Wilkinson, in 1 International Law Notes, 26. For a case affirming loss of German nationality by more than ten years' absence, see Hahn *v.* Koster Keunen (Court of Appeal, The Hague, 1916), Weekblad, No. 10,071.

David Dudley Field, Outlines of an International Code, 2d ed. 130, states the rule to be that "a person who has ceased to be a member of a nation without having acquired another national character is nevertheless deemed to be a member of the nation to which he last belonged, except so far as his rights and duties within its territory or in relation to such nation are concerned." To the same effect, Morse on Citizenship, 160. Borchard, Diplomatic Protection, 592, says that this "can hardly be considered as a recognized rule of international law." There is no direct decision in the United States. Cp. Ludlam *v.* Ludlam (1863), 26 N. Y. 356, 84 Am. Dec. 193; State *v.* Adams (1876), 45 Iowa, 99, 24 Am. Rep. 760; Murray *v.* McCarty (1811), 2 Munf. (Va.) 393.

There may even be cases, where a person is born without nationality; an illegitimate child born in Russia of an English mother has neither Russian nor British nationality. If such person has subsequently acquired German nationality by naturalization, and then lost it under the provisions of the German law above mentioned, it becomes important to determine whether, e. g., upon a loss of a subsequently acquired American citizenship, under the doctrine of United States *ex rel.* Anderson *v.* Howe, above cited, he reacquires his German nationality or the statelessness attached at birth. Equally perplexing questions may arise in the cases of dual nationality.

" Ally of enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

" Ally of enemy."

The subject or citizen of a state that is an ally of an enemy is not, in the absence of statute, an alien enemy or subject to any disabilities attaching to the latter class of persons. Nor is the question affected by the severance of diplomatic relations. See *supra*, p. 42. Within the meaning of the term "ally of enemy nation" are included at the present date (January 15, 1918) Bulgaria and Turkey.

By the Act transactions with the subjects of ally of enemy states are placed, for the purposes of the Act, in the same position as those with the subjects of a state with which the United States is at war. Technically, therefore, the Act forbids all transactions or communications with the diplomatic and consular representatives of Bulgaria within the United States. But the circumstance that diplomatic relations have not been severed with Bulgaria may be regarded as an implied license to trade and communicate with agents of this Government within, but not without, the United States, in regard to all ordinary matters.

" Person."

The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

" United States."

The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

" Land."

This includes an American private vessel on the high seas, [Wilson *v.* McNamee (1880), 102 U. S. 572, 23 L. ed. 234] and an American public vessel even within the territorial waters of a foreign state. Cp. The Exchange (1813), 7 Cr. 116, 3 L. ed. 287; (1855), 7 Op. Atty.-Gen. 122; (1856), 8 Op. Atty.-Gen. 73. That offences against this Act may be committed on the high seas, e. g., by the sending of a wireless message from an American vessel, is expressly recognized by the Act. See section 18.

" Water."

As to what waters are within the jurisdiction of the United States, is determined by the general principles of international law, subject to any modifications made by the political departments of the government. It does not comprise the high seas, properly so called, nor does jurisdiction extend to acts done on foreign public vessels within the territorial limits of the United States. The Exchange (1813), 7 Cr. 116, 3 L. ed. 287; (1855), 7 Op. Atty.-Gen. 122; (1856), 8 Op. Atty.-Gen. 73.

" Continental or insular."

The use of these words sets at rest any question that might otherwise have arisen under the restriction placed upon the meaning of the term "United States" under the doctrine of the so-called "Insular Cases," Downes *v.* Bidwell (1900), 182 U. S. 244, 45 L. ed. 1088; De Lima *v.* Bidwell (1900), 182 U. S. 1, 45 L. ed. 1041, and subsequent cases, regarding the position of the Philippines, Porto Rico and the Canal Zone. Cp. section 18.

" In any way within the jurisdiction of the United States."

The Act is operative in all places subject to the political sovereignty of the United States, regardless of the manner in which such political sovereignty was acquired, whether by conquest, cession, annexation, or occupation. It is not operative even as to citizens of the United States in countries where these citizens enjoy extraterritorial privileges (e. g., China, Siam) because these places are not subject to the political sovereignty of the United States. Cp. Mather *v.* Cunningham (1909), 105 Me. 326; Huberich, Domicile in Countries granting Exterritorial Privileges, 24 Law Quarterly Review, 444, 31 Ibid. 447. The English acts and proclamations relating to trading with the enemy were extended to British subjects in these countries. And cp. In re Tootal's Trusts (1883), 23 Ch. 532; The Lutzow (1915), 1 Trehern P. C. 528. The English courts adhere to the doctrine laid down in In re Tootal's Trusts, Casdagli *v* Casdagli (1917), The Times, November 10, 1917.

The courts will take judicial notice of the boundaries claimed by the political departments of the government. Jones *v.* United States (1890), 137 U. S. 202, 34 L. ed. 691.

" Occupied by the military or naval forces."

See notes, *supra*, p. 57. The Act applies to all territory in the military or naval occupation of the United States. This is in accordance with the rules laid down during the Civil War. In United States *v.* Lapéne (1873), 17 Wall. 601, 21 L. ed. 693, the facts were as follows: In February, 1862, while the whole State of Louisiana, including the city of New Orleans, was under the civil and military control of the Confederacy, a firm in New Orleans sent their agent into certain interior parishes of the State to collect money due to the firm and to make purchases of cotton. After the agent had arrived in the interior parishes, but before he had bought any cotton, the city of New Orleans was captured by the forces of the United States and remained from that time under the control of that Government. The interior parishes, however, still remained in the control of the Confederacy. Subsequently to this, the agent made purchases of cotton from persons in the interior parishes. There was no evidence of any communication having passed between the firm and the agent. The cotton purchased was subsequently captured by the military forces of the United States. Hunt, J., says: "All commercial contracts with the subjects or in the territory of the enemy, whether made directly by one in person, or indirectly through an agent, who is neutral, are illegal and void. This principle is now too well settled to justify discussion. No property passes and no rights are acquired under such contracts. In March, 1862, the whole of the State of Louisiana was in the military possession of the Confederate forces. Intercourse between the inhabitants of the different portions thereof was legal, and contracts made between them were legal. On the 27th of April, in the same year, the city of New Orleans was captured by the military forces of the United States, and thereafter remained under their control. From that time commercial intercourse between the inhabitants of that city and the inhabitants of other portions of the State of Louisiana which remained under the Confederate rule became illegal. Ordinarily the line of non-intercourse is the boundary line between the territories of contending nations. The recent war in the United States was a civil war, in which portions of the same nation were engaged in hostile strife with each other. The State of Louisiana, although one of the United States, was under the control of the Confederate government and their armies, and was an enemy's country. While the city of New Orleans was under such control it was a portion of an enemy's country. When that city was captured by the forces of the United States, the line of non-intercourse was changed, and traffic before legal became illegal. This line was that of military occupation or control by the forces of the different governments, and not that of State lines." Accord: Montgomery *v.* United States (1875), 15 Wall. 395, 21 L. ed. 97; Desmare *v.* United States (1876), 93 U. S. 605, 23 L. ed. 959.

Enemy territory in the occupation of the military or naval forces of the United States comes under the jurisdiction of the United States subject to the limitations imposed by the Hague Convention of 1907, concerning the Law and Customs of War on Land. See *supra*, p. 44.

"Beginning of the war."

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

"Beginning of the war."

By Joint Resolution passed by Congress on April 6, 1917, a state of war was declared to exist between the United States and the German Empire, and by a similar resolution, passed on December 7, 1917, a state of war with Austria-Hungary was declared. The Joint Resolutions contain no provision relating to the hour of that day when such state of war began to exist. The civil effects of a declaration of war attach as of the moment of declaration. The Joint Resolution, declaring a state of war with the German Empire was signed by the President on April 6, 1917, at 1:18 P. M., Washington time. The declaration against Austria-Hungary was signed on December 7, 1917, at 5:03 P. M., Washington time. See also *supra*, p. 50.

For the purposes of the Trading with the Enemy Act, the beginning of the war is the end of the day on which war was declared, but this does not apply to transactions not affected by the Act.

By the term "war" is meant not the mere employment of force but the existence of the legal condition of things in which rights are or may be prosecuted by force. Thus, if two nations declare war against each other, war exists though no force whatever may as yet have been employed.

On the other hand, force may be employed by one nation against the other, as in the case of reprisals, and yet no state of war may arise. 7 Moore, International Law Digest, section 1100.

The mere fact that there has been no counter-declaration of any kind, does not affect the situation. A declaration of war may be unilateral. It is not "a mere challenge to be accepted or refused at pleasure by the other. It proves the existence of actual hostilities on one side at least, and puts the other party also into a state of war." The Eliza Ann (1813), 1 Dod. 234, 2 Roscoe P. C. 162. "We have heard considerable argument to the effect that war is not unilateral—which, no doubt, is true—that you must have at least two nations engaged in hostilities. . . . All this to my mind is beside the mark. Immediately the Royal prerogative is exercised and war is declared against another nation every subject of His Majesty is bound to regard every subject of that nation as an enemy." Per Lord Wrenbury, in British and Foreign Mar. Ins. Co. *v.* Sanday & Co. [1916] 1 A. C. 650.

The law recognizes a state of peace and a state of war but knows of no intermediate state. Trotter (Supp.) 4. This is clearly brought out in the decision in the House of Lords in Janson *v.* Driefontein Consolidated Mines [1902] A. C. 484. In this case a British subject who underwrote a policy of insurance by which a Transvaal company was insured, among other risks, against arrests, restraints, and detainments, of all kings, princes and peoples, was held liable to make good the loss of the property through its seizure by the Transvaal government some days before the actual outbreak of the Boer War. The imminence of war was held not to affect the validity of the contract. Lord Halsbury said: "It would be, to my mind, to introduce a new principle into our law to hold that the probability of a war should have the same operation as war itself. It is war and war alone that makes trading illegal."

Lord Macnaghten in the same case said: "The law recognises a state of peace and a state of war, but it knows nothing of an intermediate state which is neither the one thing nor the other—neither peace nor war." So also Lord Robertson: "It cannot be affirmed that at the moment in question there was a state of war between this country and the Transvaal. That the Transvaal was a future enemy, an intending enemy, that she was arming, and that this seizure was an act of arming—all this I assume and I believe; and if the principle of the cases about actual war really involved cases of impending war, I should not be deterred by the absence of any former decision from applying it. But for the purposes of the present question there are, as it seems to me, but two categories—war and not war; and the difference between the two things is essential. The present case is perhaps as strong a case as can occur, but in it war was still a contingency or futurity. To extend the law's prohibition of trading with the King's enemies to future or contingent enemies would be subversive of the broad and palpable distinction between peace and war, would be unworkable in practice, and productive of endless uncertainty and loss. I mention these considerations not as if we were here as legislators, or had to decide upon a balance of general considerations. But the question whether it is workable or salutary is one of the tests of any legal doctrine, and I am satisfied that the law against trade with enemies is inapplicable to the events now in question.

Lord Lindley said: "Threatened war, or anticipated war, or imminent war is peace." Lord Davey said that any other view involves an extension of the law that "would certainly lead to interference with the lawful contracts and commercial pursuits of the King's subjects. It might conceivably precipitate a state of war which it was the object of statesmen to avert."

A fortiori the imminence of a declaration of war by a foreign government cannot affect private rights. Romer, L. J., in the same case before the Court of Appeal [1901] 2 K. B. 432: said "I think the intention of a foreign government at any given time ought by these courts, for such a purpose as that which I am now considering, to be treated as conclusively determined by the way in which our government chooses or has chosen to deal with that foreign government, and that where our government has not treated the foreign government as being hostile at a particular time, our courts ought not to try and ascertain what was then in the minds of the king, president, or responsible ministers, or authorities of the foreign government." This language was quoted with approval by Lord Davey in the House of Lords.

The same principle upholding transactions made in contemplation of war and when war is imminent, is set forth in Wilson *v.* Ragosine & Co. Ltd. (1915), The Times, February 25, 1915, Trotter (Supp.) 115, where an assignment made in Germany on August 3, 1914, the day preceding the declaration of war by Great Britain against Germany, was sustained. The severance of diplomatic relations between two states, the declaration of an embargo or the prohibition of commercial intercourse, does not constitute a state of war. Trotter (Supp.) 4; Bishop *v.* Jones (1866), 28 Tex. 294; The Endeavor (1909), 44 Ct. Cl. 242; Gray *v.* United States (1886), 21 Ct. Cl. 340; Hooper *v.* United States (1887), 22 Ct. Cl. 408. Cp. Aubert *v.* Gray (1861), 3 B. & S. 163; Bentwich, War and Private Property, 52.

In Muller *v.* Thompson (1811), 2 Camp. 609, Lord Ellenborough held that a voyage to a Prussian port in 1810, though the relations were very strained between Great Britain and Prussia and there was no diplomatic intercourse between the two countries, and British ships were actually excluded from Prussian ports, was not an illegal trading with the enemy, inasmuch as no war had been declared and no act of hostility committed. "We are treated very discourteously there; but it is not to be considered an enemy's port. Königsberg belongs to Prussia. We are placed in a strange anomalous situation with regard to that country and others on the Continent; but it is not that of war. We have published no declaration of war against Prussia; we have not issued letters of marque and reprisals; we have not done any act of hostility. Therefore, though the relations of amity are not very strong between us, yet we are not at war with Prussia, and a voyage from England to a Prussian port is not illegal."

It follows from this that the legal consequences attached to trading or to the entering into of contracts with the enemy do not attach to any acts done prior to an actual declaration of war. Therefore, all transactions entered into prior to the declaration of a state of war with the German Empire with persons who became alien enemies by virtue of the declaration are valid.

No state of war exists at the present date (January 15, 1918), between the United States and Bulgaria or Turkey. Trading with persons resident in countries allied with an enemy country is permitted at common law, and becomes illegal only under the Trading with the Enemy Act. Therefore, all transactions entered into prior to the passage of the Act of October 6, 1917, are valid. (See *infra*, p. 182.) See Matter of White (1917), 100 Misc. (N. Y.) 393, 166 N. Y. Supp. 712, holding that no state of war existed with Hungary at the date of the decision and authorizing payments on behalf of a person resident in that kingdom. This case is more fully given *supra*, p. 43.

The same rule applies to transactions with persons residing within territories in the military occupation of the German Empire or of her allies. Hagedorn *v.* Bell (1813), 1 M. & S. 450; cp. Blackburn *v.* Thompson (1811), 3 Camp. 61.

Congress in declaring war, may make the declaration retroactive. In the war between the United States and Spain, the Act of Congress relating to the same, empowered the President to proclaim war as of April 21, 1898. The Pedro (1899), 175 U. S. 354, 44 L. ed. 195; The Buena Ventura (1898), 87 Fed. 927.

War may exist by reason of actual commencement of hostilities without a formal declaration. The Nayade (1802), 4 C. Rob. 251; The Teutonia (1872), L. R. 4 P. C. 179; The Prize Cases (1862), 2 Black, 635, 17 L. ed. 459; United States *v.* Polly (1899), W. N. 12.

The courts will take judicial notice of the existence of war. Sutton *v.* Tiller (1869), 6 Coldw. (Tenn.) 593, 98 Am. Dec. 471; Ogden *v.* Lund (1854), 11 Tex. 688; Bishop *v.* Jones (1866), 28 Tex. 294; Philips *v.* Hatch (1871), 1 Dill. 571, F. C. No. 11,094; Hamilton *v.* M'Claughry (1905), 136 Fed. 445; In re Wulzen (1916), 235 Fed. 362. The state of war with the German Empire and Austria-Hungary was declared by Joint Resolutions of Congress, and must, therefore, be judicially noticed by the courts.

"End of the war."

The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

"Date of proclamation of exchange of ratifications of the treaty of peace."

Treaties only become definitively binding on being ratified. The Act does not distinguish between a definitive treaty of peace and a preliminary treaty of peace. Either would operate as an armistice, if no separate armistice is concluded. But a suspension of hostilities does not bring about a termination of a state of war, and, therefore, trading remains illegal. Griggs (1898), 22 Op. Atty.-Gen. 190. After the signing of the protocol of August 12, 1898, between the United States and Spain, a limited trade with Cuba, Porto Rico and the Philippines was permitted. 7 Moore, International Law Digest, section 1162.

The question when war ceases is one to be determined by the political organs of governments, not by the courts. Conley *v.* Calhoun County (1868), 2 W. Va. 416.

"Unless the President shall by proclamation declare a prior date."

Such a proclamation merely terminating the operation of the Act would revive the provisions of the common law relating to the nullity of transactions involving trading with the enemy. Therefore, unless such proclamation expressly or impliedly permits such trading, contracts entered into between the going into effect of the proclamation and the ratification of a treaty of peace, and prohibited at common law, would be void.

" Bank or banks."

The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

" To trade,"

The words "to trade," as used herein, shall be deemed to mean—

" Trade."

The Act prohibits any trade "with, to, or from, or for, or on account of, or on behalf of, or for the benefit of" an enemy or ally of enemy. For a consideration of the meaning of these terms, see notes to section 3, *infra*, p. 133.

The decisions of the courts are replete with dicta to the effect that all forms of intercourse and more particularly all forms of commercial intercourse are prohibited. The leading case is The Hoop (1799), 1 C. Rob. 196, 1 Roscoe P. C. 104, where Lord Stowell says: "In my opinion there exists such a general rule in the maritime jurisprudence of this country, by which all trading with the public enemy, unless with the permission of the sovereign, is interdicted. . . . In my opinion no principle ought to be held more sacred than that this intercourse cannot subsist on any other footing than that of the direct permission of the state. Who can be insensible to the consequences that might follow if every person in time of war, had a right to carry on a commercial intercourse with the enemy, and, under color of that, had the means of carrying on any other species of intercourse he might think fit." Similar views were laid down by the same judge in The Cosmopolite (1801), 4 C. Rob. 8, 1 Roscoe P. C. 326.

Similar statements of the law have been made in numerous decisions in the American courts. Thus, Story, J., delivering the judgment of the Supreme Court in The Julia (1814), 8 Cr. 181, 3 L. ed. 528, says: "At the threshold of this inquiry, I lay it down as a fundamental proposition that, strictly speaking, in war all intercourse between the subjects and citizens of the belligerent countries is illegal, unless sanctioned by the authority of the Government, or in the exercise of the rights of humanity. I am aware that the proposition is usually laid down in more restricted terms by elementary writers, and is confined to commercial intercourse. . . . Independent of all authority, it would seem a necessary result of a state of war to suspend all negotiations and intercourse between the subjects of the belligerent nations. By the war every subject is placed in hostility to the adverse party. He is bound by every effort of his own to assist his own Government and to counteract the measures of its enemy. Every aid, therefore, by personal communication, or by other intercourse, which shall take off the pressure of the war, or foster the resources, or increase the comforts of the public enemy, is strictly inhibited."

During the present war, Sir Samuel Evans, the President of the Probate, Divorce and Admiralty Division of the English High Court in The Panariellos (1915), 1 Lloyd's P. C. 364, has stated the law to be as follows: "First, when war breaks out between States, all commercial intercourse between citizens of the belligerents *ipso facto* becomes illegal, except in so far as it may be expressly allowed or licensed by the head of the State. Where the intercourse is of a commercial nature, it is usually denominated 'trading with the enemy.' This proposition is true also, I think, in all essentials with regard to intercourse which cannot fitly be described as commercial."

An examination of all the decided cases, however, fails to show the actual application of any such general doctrine. Justice Gray, after a review of all of the authorities in Kershaw *v.* Kelsey (1869), 100 Mass. 561, 97 Am. Dec. 124, sums up the matter as follows: "The result is, that the law of nations, as judicially declared prohibits all intercourse between citizens of the two belligerents which is inconsistent with the state of war between their countries: and that this includes any act of voluntary submission to the enemy, or receiving his protection; as well any act or contract which tends to increase his resources; and every kind of trading or commercial dealing or intercourse, whether by transmission of money or goods, or orders for the delivery of either, between the two countries, directly or indirectly, or through the intervention of third persons or partnerships, or by contracts in any form looking to or involving such transmission, or by insurances upon trade with or by the enemy. Beyond the principle of these cases the prohibition has not been carried by judicial decision. The more sweeping statements in the text books are taken from the dicta which we have already examined, and in none of them is any other example given than those just mentioned. At this age of the world, when all the tendencies of the law of nations are to exempt individuals and private contracts from injury or restraint in consequence of war between their governments, we are not disposed to declare such contracts unlawful as have not been heretofore adjudged to be inconsistent with a state of war."

To the same effect, Coolidge *v.* Inglee (1816), 13 Mass. 26, where Jackson, J., says: "This general proposition cannot be maintained, in the unlimited extent to which it has been carried in the argument for the defendant. Commercial intercourse between two nations at war is understood to be prohibited. This interdiction applies, in general, to any species of commerce by which the enemy may be benefited at the expense of our own country. But the books of the highest authority on the law of nations, and the usages of all civilized people in modern times, abundantly prove that intercourse is not universally prohibited, and that even contracts with an enemy are in some cases allowable." And after carefully examing in detail the statements of the text writers, he expressed the belief that "the prohibition is confined, among all civilized nations in modern times, to such intercourse as is commercial."

Even the legality and policy in favor of the lodging of funds in and the payments of debts to an enemy country, has been sustained. Thus Peter, Circ. J., in United States *v.* Ariadne (1812), Fisher's P. C. 32, F. C. No. 14,465 (but see s. c., 2 Wheat. 143, 4 L. ed. 205): "I believe that intercourse of exchange is common between hostile countries generally, though it may be subject to more or fewer interruptions in some than in others. No period of history ever exhibited so extensive a scene of warfare and desolation, as the time in which we live. Relaxations of old principles, better settled than the new one now contended for, necessarily take place, in the present state of the world among nations at war. Shall we then, to whom such relaxations are as necessary as they can be to any other nation, insist on their severities, and visit them on the heads of our own citizens? The old routine of a kind of barter, by sending cargo for cargo, has long ceased. Credits, called 'funds,' or the paper representations of them, are lodged in one part of the globe, for enterprises of trade in any or every part of it. They are placed in the country either directly or circuitously, from whence they can be most conveniently drawn, or in which with most safety, they may temporarily remain. With the country, now our enemy, we have long had, and since the war, have innocently continued extensive commerce. We have large amounts of funds lodged there, and owe considerable debts. Intercourse by exchange is more particularly required with them than with any or most other countries, for obvious reasons. I believe funds are withdrawn and debts paid in, and by bills of exchange every day. I am told that government ought to consent, even to payment of 'debts.' I think justice and good faith require, that we should continue paying; and though an act of the British parliament makes the intervention of the secretary of state necessary, there is no prohibition till government prohibits. Vide 8 Term R.

71. The machinery of exchange, when even solid funds are its moving powers and principle, is in fact, buying a debt, and innocently and justly accomplishing its payment. I am referred to a transaction in England in the time of Mr. Pitt, when an act of parliament was passed, originating in the intention (whatever were the terms in which it was conceived) to prevent French citizens from withdrawing their funds. This was done to save the property of a class favoured by Great Britain, and on a special emergency, and not on a general principle. It proves, however, nothing more strongly, than that it required an act of parliament to prohibit what was before lawful."

Paying debts.

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

See also notes to preceding paragraph and to subsection (b) *infra.*

"Pay."

At the beginning of the present war, the payment of an existing indebtedness to an alien enemy, was permitted in England.

Payment in compliance with the judgment of a foreign court is a violation of the Act. But cp. Rex *v.* Kupfer [1915] 2 K. B. 321, where the court intimates that in such cases payment may be justified.

Negotiable instruments.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

As to rights of endorsees and assignees, see section 7 (b). As to acts done before October 6, 1917, see *infra*, p. 109.

"Draw."

Although there are expressions in the older authorities to the contrary, in practice there was no prohibition against drawing bills of exchange on persons residing in enemy territory. During the War of 1812, under license, cartel ships frequently sailed from New York to England taking such bills. In July, 1813, the "Robert Burns" carried about £1,000,000 of such bills, and the "Fair American" sailing in January, 1814, carried about half that amount. Cp. Griswold *v.* Waddington (1819), 19 John.

(N. Y.) 438. While in these cases there was an express license, it is said on good authority [Barker *v.* United States (1820), 1 Paine, 156, F. C. No. 14,159], that during this war scarcely a vessel sailed from the United States to any part of Europe that did not carry bills drawn on British firms, "and although many of these were inspected by the marshal of the district, yet, we do not hear that he ever thought of stopping them *in transitu*, or of complaining to the executive, or to a grand jury of those who had drawn them; nor did the legislature, although every member of Congress must have known of a practice which no one took any pains to conceal, ever interfere to prevent it, or lay it under any restraint whatever."

In the case last cited, Livingston, J., in an elaborate opinion concludes that such acts are valid. "Another objection taken at the trial, which was also overruled, arose out of the supposed illegality of the transaction. The United States and Great Britain being then at war, it was unlawful for the plaintiff in error, in the opinion of his counsel, or for any other citizen of the United States, to draw a bill of exchange on any subject of Great Britain, or other person residing within the British dominions. . . . The practice of the civilized world might safely be relied on as repugnant to the proposition, which, to the extent now contended for, was never heard of until the late war. In the present state of commerce, it is scarcely possible for a war to break out between two nations trading with each other, without the subjects of the one being more or less indebted to those of the other. Nay, it may often be necessary for the subjects of the one to remit monies to those of the other, as the best and safest way of disposing of funds which they may have abroad, and which may arise from their commerce with neutral nations. These are negotiations with which it is beneath the dignity of government to interfere. The pressure of war on the individuals of both countries is thereby, in some degree, taken off, and their governments, instead of being injured by such an innocent interchange of good offices, are enabled to prosecute the war with more vigour, without being exposed to the clamour and ill-will of a large body of citizens who always suffer so much by the loss of trade. In the first case, that is, of a war's finding the subjects of the parties mutually indebted to each other, what has been done, not in one or two solitary cases, but by every merchant of this or any other country? Has it ever before occurred to any one of this numerous class of citizens, however scrupulous in other respects of violating any law of the land, that any criminality or responsibility attached by drawing a bill on his enemy for a debt due to him at the time of the war's breaking out, or contracted pending hostilities? It is difficult to perceive how such an act can add to the resources or increase the comforts of an enemy. If the bill be in favour of a neutral or a citizen of the United States, the money will probably be withdrawn from the enemy's country altogether; and, if in favour of a subject of the enemy, it will but take the money out of the hands of one British subject and place it with another; and if neither be done, the money will always remain at the disposal of the party remitting, and cannot, without a violation of good faith, be added to the resources of government. But be this as it may, the universal usage on this subject, and the entire absence of any adjudged cases, are at least *prima facie* evidence of its legality. The practice of our own merchants during the late war, it is well known, was in conformity with it. . . . So innocent was this conduct thought during the late war, that bills on London were not only publicly sold in our cities, but cartels were probably sometimes permitted to go principally for the purpose of giving our merchants an opportunity of writing to their English correspondents, and of drawing on them for monies in their hands, or of making remittances for the payment of debts due by them, or of sending them bills on other parts of Europe to be collected for their use. If the inhibition of intercourse in time of war be as universal as is now pretended, the voluntary payment of a debt to an enemy must be a crime. Nor can a father who may have a son with the enemy, write him the most innocent letter on family affairs without subjecting himself to a public prosecution; for it will be idle to brand such conduct as criminal, unless the parties be liable to punishment in this way. The Court has indeed been referred to the Black Book of the Admiralty, which is alleged to be as ancient as the reign of Edward the Third, to show that acts of this kind are in truth indictable offences, inasmuch as one of its articles directs the grand inquests to inquire of all 'those who intercommune with, sell to, or buy of any enemy without special license of the king, or of his admiral.' I will not deny the existence of this article, nor that it may be near five hundred years old; but as no presentment or indictment can be produced against any person during the lapse of so many centuries for drawing a bill of exchange on an enemy, or for remitting him money in payment of a debt, or for the bare remittance of money, in any other way, for the benefit of the party remitting, notwithstanding the numerous and long wars in which England has been engaged, during that period; it may very safely be concluded that such an intercourse, if it can be called by that name, common as it must have been in many of them, was never considered as the intercommunion or intercourse to be inquired of under this article; or if it was, that it has been disregarded for so many ages, and has become so obsolete that nothing but an act of the legislature can ever revive it on this side of the Atlantic. The drawing of a bill of exchange has been called trading with an enemy. This Court does not consider it in that light within the meaning of any one of the cases cited. It is easy to see that a trade properly so called, if permitted, may very well be the occasion of considerable injury to the state. It may be the means of supplying its enemy with articles of the first necessity, and might lead to personal intercourse and communications highly important, without a possibility of detection. No such danger can be apprehended from a letter covering a bill of exchange, so long as the writer of it continues at the distance of three thousand miles and more from the person to whom it is addressed. . . . If no man can take a bill of exchange in time of war, without the risk of losing his money for the illegality of the transaction, it would amount to a sequestration during hostilities, of all the funds of an American citizen in the country of the belligerent; and that without any act, on the part of the enemy's government to produce such a state of things. . . . The opinion of the Court then is, that the plaintiff, by drawing the bill in question, violated neither the laws of nations, nor any municipal regulation of his own country;—that he did an act perfectly innocent, if not meritorious, and which has too long received the sanction of public opinion and general usage, to render it necessary or proper to be checked by the interposition of a court of justice, which could not be done, without sacrificing the interests of our innocent and unsuspecting merchants to gratify the cupidity of those who may since have been advised that the transaction was unlawful, and may be desirous of taking advantage of it. It would require the very grave consideration of a much higher tribunal than this, to decide that such conduct is illegal, and that the persons the least guilty of those concerned, if there be any guilt at all in it, shall lose the money which he has paid for the bill, while the party who drew the bill shall not only escape punishment, but retain, without any accountability to any one, all that he may have received for it." See also, United States *v.* The Ariadne (1812), Fisher's P. C. 32, F. C. No. 14,465.

But in the cases arising during the Civil War a contrary decision was reached. Moore *v.* Foster (1868), Chase, 222, F. C. No. 9760; Bilgerry *v.* Branch (1869), 19 Gratt. (Va.) 393, 100 Am. Dec. 679; Woods *v.* Wilder (1870), 43 N. Y. 164; Tarleton *v.* Bank (1873), 49 Ala. 229. Even though the payee at the time he received the bill of exchange supposed that the place upon which it was drawn was not enemy territory. Williams *v.* Mobile Savings Bank (1875), 2 Woods, 501, F. C. No. 17,729. But in this case the payee was held to be entitled to recover from the drawer, on the common counts, the money paid for the bill. And the case last cited is contrary to the principle of Musson *v.* Fales (1820), 16 Mass. 332.

In Haggard *v.* Conkwright (1869), 7 Bush (Ky.) 16, 3 Am. Rep. 297, an order for money drawn upon a resident of the State of Texas, payable to another resident of that State, drawn in the State of Kentucky on September 23, 1861, by a resident thereof, and delivered to another resident thereof, who sent the order through the lines during the war, was held not illegal, nor in violation of the Act of Congress of July 31, 1861, and the Proclamation of the President of the United States of August 16, 1861. It was said that though the order operated to transfer the money from the hands of one resident of the enemy's country to those of another, it subjected nothing to the forfeiture denounced by the said Act of Congress and Proclamation of the President as coming from or proceeding to the opposing hostile state; it did not operate to transfer the money from one belligerent to the other.

Daniel, Negotiable Instruments, 6th ed., section 220, says that a bill drawn on an alien enemy in favor of a neutral payee, may be sued upon by the neutral in a suit against the drawer or acceptor. And it has been held that a non-enemy holder in due course can, at common law, sue on a bill of exchange made with an alien enemy in time of war. Johnston & Wright *v.* Goldsmid (1809), a Scottish case, cited by Trotter (Supp.) 52; United States *v.* Barker (1820), 1 Paine, 156, F. C. No. 14,517.

This rule has been modified to some extent in England by the Trading with the Enemy Amendment Act, 1914 (5 Geo. 5,c. 12), section 6 (2): "No person shall by virtue of a bill of exchange or promissory note made or to be made in his favour by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights or remedies against any party to the instrument unless he proves that the transfer was made before the commencement of the present war, and any party to the instrument who knowingly discharges the instrument shall be deemed to be guilty of trading with the enemy within the meaning of the principal Act: Provided, that this subsection shall not apply where the transferee, or some subsequent holder of the instrument, proves that the transfer, or some subsequent transfer, of the instrument was made before the nineteenth day of November, nineteen hundred and fourteen, in good faith and for valuable consideration." Cp. Act, section 7 (b), *infra,* to same effect.

In Weld *v.* Fruhling (1916), 32 T. L. R. 469, an action was brought to recover the amount of a bill of exchange for £688 1s. 1d. drawn on June 26, 1914, by Albrecht Weld and Co., a German firm carrying on business at Bremen, upon the defendants and accepted by them, payable in London to the order of Albrecht Weld and Co. The due date of the bill was January 1, 1915, and it was endorsed to the plaintiffs in this way. The ramifications of title of the plaintiff firm were somewhat complicated, but it appeared that two members of the plaintiff firm were also partners in the German firm, the drawers of the bill. The fiscal year of the partnership ended on August 31 and certain profits became divisible among the partners. There was a difficulty about this because these profits were largely represented by bills which the German firm could not realize. In these circumstances the American partners of the plaintiff firm agreed to take a certain number of these bills in part payment of their share of the profits, and amongst these bills was the bill now sued upon. They thus became endorsees after maturity, and the question was whether they were entitled to sue. It was held that the matter was determined by the section just quoted. The plaintiffs could not bring themselves within the proviso. A point had been taken on behalf of the plaintiffs, that the prohibition had no relation to a case in which there had been a transfer of a bill by endorsement to a neutral in a foreign country, but so to read it would be to render the subsection inoperative. The judgment was therefore for defendants. Otherwise, if transferred before war. Motishaw & Co. *v.* Mercantile Bank of India (1916), 18 Bombay L. R. 521.

" Accept."

An acceptance of a bill of exchange drawn by an enemy drawer is trading with the enemy, even if the drawee accepts solely for his own account in order to protect the interest of a shipment, and with the intention of retaining the goods himself to meet the draft. It was accordingly held, that in a shipment made on the terms "documents against acceptance" such an acceptance is not sufficient to pass the property in the goods. "If Brandt & Co. had accepted on August 24 on behalf of the enemy, I am inclined to think that this case would come under the case of The Rapid (8 Cranch, 165), and the goods would be liable to confiscation; but it appears that they intended to accept on their own behalf, and not on behalf of the enemy. It may be that this was done for the purpose of defeating the prize law with regard to bankers' lien and converting their lien into direct ownership." The Koerber (H. B. M. Supreme Court for Egypt, 1915), 1 Trehern P. C. 640. Accord: The Barenfels (H. B. M. Supreme Court for Egypt, 1915), 1 Trehern P. C. 395 (per Grain, J.: "As the contract in this case was one of 'documents against acceptance,' the property in the goods does not pass until the acceptance has taken place; and as I am of opinion that the acceptance which took place after the outbreak of war is an act of trading with the enemy and is consequently illegal and void, I hold that for the purposes of this case no acceptance has taken place, and the property in the goods still remains in the German firm and has not passed to the British firm, Diethelm & Co. It has been suggested by the counsel for the claimants that, even if the acceptance is held to be a trading with the enemy, it would not prevent the passing of the property. I think that he himself thought he had not very solid ground to stand on with regard to that point; but as the point was mentioned, I may as well say that if I am right in deciding that this acceptance amounts to a trading with the enemy, I have no hesitation in deciding that the contract completed by the illegal acceptance would be void as being against public policy and injurious to the State, and the contract being void the property in the goods would not pass."

"Pay."

This has no application to the payment of a draft drawn by a firm doing business in a neutral state, and who had before the war paid for the goods to a person the subject of and resident within an enemy state. Radley *v.* Garber (1915), 50 Que. S. C. 264.

"Present for acceptance or payment."

The bill of exchange may not be presented for acceptance or payment.

Presentment of a bill of exchange for acceptance or payment, or of a promissory note for payment is excused during war, if the parties are separated by the line of war. Presentment must be made within a reasonable time after the disability arising from the prohibition of intercourse is removed. Peters *v.* Hobbs (1867), 25 Ark. 67, 91 Am. Dec. 529; Lane *v.* Bank of West Tennessee (1872), 9 Heisk. (Tenn.) 419.

In England the matter is covered by an Act of Parliament of September 18, 1914 (4 & 5 Geo. 5, c. 82): "Without prejudice to the operation of subsection (1) of section forty-six of the Bills of Exchange Act, 1882, delay in the presentment for payment of a bill of exchange, where the proper place for payment is outside the British Islands, is excused if the delay is, or has been, due either directly or indirectly to circumstances arising out of the present war, or to the impracticability, owing to similar circumstances, of transmitting the bill to the place of payment with reasonable safety."

The same rule applies as to notice of dishonor. Dunbar *v.* Tyler (1870), 44 Miss. 1; James *v.* Wade (1869), 21 La. Ann. 548; Morgan *v.* Bank of Louisville (1868), 4 Bush (Ky.), 82. It was suggested in United States *v.* Barker (1822), 1 Paine, 156, F. C. No. 14,519, that notice should, if possible, be given through a neutral country. But such communication is prohibited by the Act, and the actual decisions are contrary to this view. The mailing of notice of dishonor addressed to a person in enemy territory during war is not required. Such notice is not due notice. Farmers Bank *v.* Grinnell (1875), 26 Gratt. (Va.) 131; Harden *v.* Boyce (1870), 59 Barb. (N. Y.) 425; Shaw *v.* Neal (1867), 19 La. Ann. 156; Citizens Bank *v.* Pugh (1867), 19 La. Ann. 43, unless it be shown that by law or usage the post office authorities are required to retain such communication during war and to forward it, when postal communications are restored. Bilgerry *v.* Branch (1869), 19 Gratt. (Va.) 393, 100 Am. Dec. 679. This is not the case at present, as the post office authorities return all communications addressed to an enemy country to the sender, except certain territories in the military occupation of Great Britain and her allies. The mailing of such notice is an attempt to trade with the enemy [within section 2 (a)] or an attempt to transmit a communication [section 3 (c)] to an enemy.

It must be noted that what has been said in regard to presentment and notice applies only to cases where the contract between the parties is governed by the law of the country prohibiting the intercourse. Laws prohibiting trading with the enemy have no extra-territorial application. See *supra*, p. 50.

" Endorse."

The Act prohibits the endorsement by, for, or on account of, etc., of an enemy or ally of enemy of a negotiable instrument, and no rights can be acquired under such endorsement of an instrument unless the same was made prior to the war, or unless the holder proves lack of knowledge and gives reasonable cause to believe that the same was so made and acquired title prior to October 6, 1917. See section 7 (b).

At common law, it was held that the endorsement of a certificate of deposit executed by a bank in an enemy country, and which was void because it was a contract between persons who were citizens of opposing belligerents, may be sued on if the contract of endorsement was made between persons both of whom were not enemies. Morrison *v.* Lovell (1870), 4 W. Va. 346. In Russell *v.* Russell (1874), MacArthur (D. C.) 263, a non-negotiable note was endorsed in Alabama and given to a messenger, who conveyed it through the military lines and delivered it to plaintiff in Kansas in violation of the Non-Intercourse Act of 1861. It was held, that plaintiff could not recover, but the court intimated that if the transfer had been of a non-commercial character, it would have been sustained.

The English Trading with the Enemy Proclamation No. 2, of September 9, 1914, is broader in its scope in that it also prohibits "negotiating or otherwise dealing with any negotiable instrument." *Semble*, it therefore prohibits dealing within Great Britain in enemy bearer bonds, currency notes and bank notes, which is not prohibited by the Act. See 59 Sol. Jour. 507.

" Any negotiable instrument or chose in action."

The operation of this subsection is not confined to negotiable instruments. An assignment may also be a violation of subsection (e).

Enemy parties.

Where the payee is an alien enemy, a negotiable instrument cannot be sued upon. Craft *v.* United States (1876), 12 Ct. Cl. 178. Conversely, a person within the jurisdiction cannot be the payee of a note executed by an alien enemy. Cp. McVeigh *v.* Bank of Old Dominion (1875), 26 Gratt. (Va.) 785. In Willison *v.* Patteson (1817), 7 Taunt. 439, it was held that a bill drawn by an alien enemy on a person resident in England payable to drawer's order and endorsed to plaintiff who was also an alien enemy, would not entitle the endorsee to recover from acceptor. This, however, is upon the general principle prohibiting contracts with an alien enemy.

Entering into or performing contracts.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

" Enter into."

A sharp distinction must be made between contracts entered into after the declaration of war and before going into effect of the Trading with the Enemy Act, and those entered into subsequently. The validity of contracts entered into after the declaration of war, and prior to the passage of the Act, is governed exclusively by the principles of the common law. The common-law conception as to what constitutes an alien enemy, is more restricted than the definition under the Act. See notes to section 2. Furthermore, the common law differs materially from the law as set forth in the Act as to the transactions that are prohibited. Where, therefore, a transaction entered into before the Act, is good at common law, it retains its validity, except as directly affected by the Act. Thus, contracts entered into prior to October 6, 1917, with persons residing or carrying on business in the territory of an ally of enemy, or in territory in the military occupation of the enemy are clearly valid. See also *supra*, p. 101, for the common-law provisions relating to negotiable instruments. Conversely, any transaction void at common law entered into prior to October 6, 1917, and permitted under the Act, is not valid. The Act expressly provides against this. Section 7 (b). But even in the absence of such a provision the transaction could not be validated by legislative act, because it is void *ab initio*, and not merely voidable. Nor can such transaction be validated by the ratification of the parties. United States *v.* Grossmayer (1869), 9 Wall. 72, 19 L. ed. 627, nor by the subsequent issuance of a license. Millar *v.* United States (1872), 8 Ct. Cl. 407. The same rules apply to contracts entered into with persons not alien enemies, but stipulating performance of acts prohibited by common law or by the Act. These are considered under section 3.

It therefore becomes important to determine what contracts may be entered into at common law with an alien enemy during war.

Common-law doctrines as to contracts entered into during war.

Subject to the exceptions noted below, all contracts made during war with an alien enemy are void. "This principle has grown hoary under the reverend respect of centuries, and cannot now be shaken without uprooting the very foundation of national law." Story, Circ. J., in The Emulous (1813), 1 Gall. 563, F. C. No. 4479. See cases cited 30 Am. & Eng. Enc. (2d ed.) 11, Note 2; 40 Cyc. 326, Note 12. But there must be knowledge or reasonable ground for belief that the opposite contracting party is an alien enemy. Musson *v.* Fales (1820), 16 Mass. 332; see *infra*, p. 145. But cp. Williams *v.* Mobile Savings Bank (1875), 2 Wood, 501, F. C. No. 17,729.

No suit can be brought on such contract by either party, even after peace. Willison *v.* Patteson (1817), 7 Taunt. 439, nor on any collateral matters, e. g., for advances made [Armstrong *v.* Toler (1826), 11 Wheat. 258, 6 L. ed. 468] or services in connection therewith. Beach *v.* Kezar (1818), 1 N. H. 184. But, *semble*, where a contract is made on behalf of two persons, one of whom is an alien enemy, the party who was not an alien enemy may sue thereon. Leftwich *v.* Clinton (1870), 4 Lans. (N. Y.) 176.

The rule that contracts with an alien enemy are illegal has been extended to contracts made between such alien enemy and the citizens of an allied state. The Nayade (1805), 4 C. Rob. 251; see also The Neptune (1807), 6 C. Rob. 403. Owing to the diversity of the political relations between the various countries at present at war with the Central Powers, and the varying rules regarding trading with the enemy enforced in these countries, these cases may give rise to difficulties. The first question to be determined is whether a political alliance must exist with the country whose citizen has entered into the contract in question. In the second place, the prohibition of trading with the enemy being one arising under municipal law and not under international law, the contract may be one valid under the law of the allied state. In this connection it is to be noted that some of the states at war with the Central Powers, do not prohibit trading with the enemy. But an American court may decline to exercise jurisdiction in any proceeding involving trade with the enemy on grounds of public policy, even where all parties are non-hostile.

Exceptions at common law to doctrine that contracts entered into during war are void.

Any contract entered into under license is valid. The conditions governing licenses are discussed below in notes to section 5. Besides these, the common law recognizes certain other exceptions:

1. *Ransom contracts.* Some states permit a release of a prize on terms of ransom, embodied in a ransom bill, whereby the master of the captured vessel covenants to pay the captor a certain sum within a given time in consideration of a release of the prize and a safe conduct to a designated port. Wheaton, International Law (5th Eng. ed. by Phillipson) 587–589.

The law is thus stated by Lord Alvanley, C. J., in Furtado *v.* Rogers (1792), 3 Bos. & P. 191: "No action was ever maintained upon a ransom bill in a court of common law until the case of Ricord *v.* Bettenham, 3 Burr. 1734, 1 Bl. 563, and I have the authority of Sir William Scott for saying that in the Admiralty Court, the suit was always instituted by the hostage. The case of Ricord *v.* Bettenham, however, certainly tended to show that such an action might be maintained in the courts of common law at the suit of an alien enemy. In consequence of this, a similar action was brought in Cornu *v.* Blackburn, Doug. 641, and after argument the Court of King's Bench held that it might be sustained. But in Anthon *v.* Fisher, Doug. 649, 650, *in notis*, the contrary was expressly determined upon a writ of error in the Exchequer Chamber."

See also The Hoop (1799), 1 C. Rob. 200, 1 Roscoe P. C. 104. Such contracts were prohibited in England by the Act of 1782 (22 Geo. 3, c. 25). But under the Naval Prize Act, 1864 (27 & 28 Vic. c. 25), the Crown may by order in council permit such contracts. No such order in council has been issued during the present war. In the United States there appears to be no specific prohibition against such contracts. Cp. Maisonnaire *v.* Keating (1815), 2 Gall. 337, F. C. No. 8978; Miller *v.* The Resolution (1781), 2 Dall. 19, 1 L. ed. 271; Goodrich *v.* Gordon (1818), 15 John. (N. Y.) 6.

2. *Contracts of necessity by prisoner of war.* Contracts made with alien enemies by persons who are detained as prisoners of war, or as civilian prisoners, in the enemy country have been sustained.

In Antoine *v.* Morshead (1815), 6 Taunt. 237, bills of exchange were drawn by the father of the defendant, a British subject detained as a prisoner in France, and payable to certain British subjects, similarly detained, and were endorsed to a French banker and accepted during the war by the defendant in England. Gibbs, C. J., said: "It will not be useless to consider what legal propositions can be deduced from the cases cited on behalf of the defendant, and to try how far they are applicable to the present case. This is no bill of exchange drawn in favour of an alien enemy, but by one subject in favour of another subject, upon a subject resident here, the two first being both detained prisoners in France; the drawer might legally draw such a bill for his subsistence. After the bill is so drawn, the payee indorses it to the plaintiff, then an alien enemy. How was he to avail himself of the bill except by negotiating it, and to whom could he negotiate it except to the inhabitants of that country in which he resided? I can collect but two principles from the cases cited by the counsel for the defendant, and they are principles on which there never was the slightest doubt. First, that a contract made with an alien enemy in time of war, and that of such a nature that it endangers the security, or is against the policy of this country, is void. Such are policies of insurance to protect an enemy's trade. Another principle is that, however valid a contract originally may be, if the party become an alien enemy he cannot sue. The Crown, during the war, may lay hands on the debt, and recover it; but if it do not, then on the return of peace the rights of the contracting aliens are restored, and he may himself sue. No other principle is to be deduced. The first may be laid out of the case, for this was not in its creation a contract made with an alien enemy. The second question is, whether the bill came to the hands of the plaintiff by a good title? Under the circumstances of this case, not meaning to lay down any general rule beyond this case, I am of opinion that the indorsement to the plaintiff conveyed to him a legal title in this bill, on which the King might have sued in the time of war, and he not having so done, the plaintiff might sue after peace was proclaimed."

Dallas, J., was of the same opinion: "This is not a contract between a subject of this country and an alien enemy, nor is it a contract of that sort to which the principle can be applied. That principle is, that there shall be no communication with the enemy in time of war, but this is a contract between two subjects in an enemy's country, which is perfectly legal."

The case is explained in Willison *v.* Patteson (1817), 7 Taunt. 439, by Gibbs, C. J., who was one of the judges in the earlier case: "Whether in arguing that case the counsel for the defendant urged that no contract could exist, I do not know; I believe that he did; but I know that that was the only consideration which made the Court hesitate on that case; but they decided it on the ground that it was an excepted case, and did not come within the general rule. The bill was drawn by an English subject on an English subject, and we thought that circumstance took it out of the ordinary rule. We adverted to the circumstance that the bill was indorsed to a foreigner, but it was not sued on until the time of peace."

In Daubuz *v.* Morshead (1815), 6 Taunt. 332, the court held that a trustee for the alien enemy holder of a bill drawn under such circumstances could sue. This is the proper distinction between this case and Brandon *v.* Nesbitt (1794), 6 T. R. 23, where it was held that the trustee of an alien enemy cannot sue during the war. Trotter (Supp.) 23. But such payment would, *semble*, be a violation of the English Proclamation of September 9, 1914. Trotter (Supp.), p. 187, Note. And it would be a "trading" as defined in section 2 of the Act " for, on account of, or on behalf of, or for the benefit of" an enemy.

Sparenburgh *v.* Bannatyne (1797), 1 Bos. & P. 163, is explainable on the grounds that plaintiff had an implied license, Trotter (Supp.) 23, 24, and that the place where the contract was made was enemy territory in the naval occupation of England.

Regarding contracts of necessity, it has been said: "The question has never yet been examined whether a contract for necessaries, or even for money to enable the individual to get home, would not be enforced, and analogies familiar to the law as well as the influence of the general rule in international law, that the severities of war are to be diminished by all safe and practical means, might be appealed to in support of such an exception. But at present it may be safely affirmed that there is no recognized exception but permission of a State to its own citizen, which is also implied in any treaty stipulation to that effect entered into by the belligerents." Scholefield *v.* Eichelberger (1833), 7 Pet. 586, 8 L. ed. 793. See also Nelson *v.* Trigg (1877), 3 Shann. (Tenn.) 733.

Trading is not excused by the necessity of obtaining funds to pay the expenses of a ship. The Joseph (1814), 8 Cr. 451, 3 L. ed. 621. But putting into an enemy port by reason of stress of weather or repairs absolutely necessary for the continuation of a voyage would not subject a vessel to the penalties of illegal trading, and contracts for repairs, *semble*, can be enforced.

3. *Non-commercial contracts.* While the dicta in the opinions are broad enough to cover all contracts, the actual decisions have been confined to transaction of a commercial or financial character. It has been suggested that even under the English trading with the enemy proclamations, a contract of a non-commercial character may be entered into during war, and that therefore a promise of marriage might be valid in favor of, and actionable at the instance of, a British subject, and that it be actionable at the instance of the other party on the restoration of peace. Trotter. (Supp.), 28. The language of the Act, section 2, is broad enough to prohibit even this class of contracts in that it prohibits any person from entering into "any contract, agreement or obligation" with an alien enemy, but such contract entered into prior to the Act, would, it seems, be valid.

A contract between an alien enemy residing and carrying on business within the country and a citizen of that country entered into after the outbreak of war, and not prohibited by any law against trading with the enemy, is valid, and is not affected by the fact that the enemy subject afterwards becomes interned as a civilian prisoner of war. Schaffenius *v.* Goldberg [1916] 1 K. B. 284.

A promise to fulfill a contract void because entered into during war is valid without new consideration. Ledoux *v.* Buhler (1869), 21 La. Ann. 130; Borland *v.* Sharp (1790), 1 Root (Conn.) 178; Duhammel *v.* Pickering (1817), 2 Starkie, 90. *Sed quære.*

Commercial transactions.

(b) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

"Buy or sell . . . any form of property."

The purpose of the subsection is to cover commercial transactions of the nature indicated. The words "or otherwise dispose of" must be interpreted under application of the *ejusdem generis* rule. What is meant is some form of agreement, conveyance or assignment in reference to property. Neither this nor any other provision of the Act was designed to prohibit devises or bequests to alien enemies. The subsection refers to all forms of property, whether real or personal, tangible or intangible.

Devises to alien enemy.

In the consideration of the question whether an alien enemy can take under a will, a distinction must be made between real property and personal property.

At common law, an alien friend can take land by purchase, though not by descent; he can take by act of the party but not by act of law. The purchase may be by grant or by devise, and in either case the estate vests in the alien, subject to the right of the sovereign to seize. But until such seizure the alien may convey at least a defeasible estate, which an office found will divest. While there is some doubt whether, at common law, an alien enemy can acquire land in freehold (Bentwich, in 9 Am. Jour. of Int. Law, 642, 651), the United States Supreme Court in Fairfax *v.* Hunter (1813), 7 Cr. 603, 3 L. ed. 453 (per Story, J.), came to the conclusion that in respect of these general rights and liabilities there is no difference between alien friends and alien enemies. "During the war the property of alien enemies is subject to confiscation *jure belli* . . . but as to capacity to purchase no case has been cited in which it was denied."

In Hoskins *v.* Gentry (1865), 2 Duv. (Ky.) 285, it was said that "by the common law, an alien, even an alien enemy, may take as a devisee, and may hold the property devised, subject to the will of the testator's government . . .; the inevitable deduction is, that though an insurgent citizen in a civil war may be treated as a belligerent, and is deemed a public enemy, yet the devise to him cannot, for that reason alone, be adjudged void." Accord: Smith *v.* Gaines (1884), 38 N. J. Eq. 65; Corbett *v.* Nutt (1868), 18 Gratt. (Va.) 624; s. c. 77 U. S. 464, 19 L. ed. 976; Stephen *v.* Swann (1838), 9 Leigh (Va.), 404 Crutcher *v.* Hord (1868), 4 Bush (Ky.) 360. Cp. Heirn *v.* Bridault (1859), 37 Miss. 209. *Semble,* even though under the State law a devise to an alien enemy is prohibited, if the devisee can take, the mere fact that the profits are to go to an alien enemy *cestui que trust* is immaterial. Cp. Marks *v.* McGlynn (1882), 88 N. Y. 357.

In England the question now comes up under the Act of Parliament of 1870 (33 & 34 Vic. c. 14). The practical question is necessarily confined to the point whether this Act of Parliament has or has not removed the liability to forfeiture in the cases where an alien has already acquired the land or been granted a lease. The better view appears to be that the liability to forfeiture has gone. It is quite true that, as Lord Lindley pointed out in Wheaton *v.* Maple & Co. [1893] 3 Ch. 48, the Crown is never bound by a statutory enactment unless the intention of the Legislature to bind the Crown is clear and unmistakable. But when section 2 of the Act of 1870 is read in the light of the then existing law, it is impossible to escape from the conclusion that the Crown's right by prerogative to the lands of an alien—which was the law's reasons for the alien's disabilities—was abrogated by the Act. It is also impossible, it seems, to confine the word "alien," as used in the Act, to aliens other than alien enemies. The terms of the section leave no loophole for such a distinction. Land may be held by an alien in the same manner in all respects as by a natural born British subject. 59 Sol. Jour. 86. Bentwich, *loc. cit.*, is of the same opinion.

The doctrine of Fairfax *v.* Hunter has been expressly approved in a case arising during the present war in Australia, In the Will of Doig, [1916] Victoria Law Reports, 698, 704, where Hood, J., says: "The old strictness, founded partly on the feudal system, has, I consider, passed away, and the real test is the safety of the realm; and on that principle I can see no reason for holding this gift to be bad or illegal."

It may therefore be regarded as settled that at common law both in the United States and in England an alien enemy may take real estate by devise. The right of the Crown to seize appears to be abrogated by the Act of Parliament of 1870 (33 & 34 Vic. c. 14), and, in general, the rights of a belligerent over real property belonging to an enemy are more restricted than the rights over personal property.

State statutes relating to devises to alien enemies.

Subject to treaty provisions (a question not at present involved) the rights of aliens to hold, convey and take real property in the United States is governed by the *lex situs*. While some of the States place aliens, both resident and non-resident, in the same position as citizens, others impose restrictions on alien holding or acquisition. Among the State laws specifically prohibiting the conveyance or acquisition of real property by alien enemies may be noted the following:

Georgia. [Park's Annotated Code of Georgia (1914), section 2173]:

"Aliens the subjects of governments at peace with the United States and this State, so long as their governments remain at peace, shall be entitled to all the rights of citizens of other States resident in this State, and shall have the privilege of purchasing, holding and conveying real estate in this State."

Such aliens may receive and enforce liens. Code, section 2175. The statute appears to be directed against both resident and non-resident alien enemies.

Kentucky. [Carroll's Kentucky Statutes (1915), sections 334, 337]:

"An alien, not being an enemy, shall, after he has declared his intention to become a citizen of the United States, according to the forms required by law, be enabled to recover, inherit, hold, and pass by descent, devise or otherwise, any interest in real or personal property, in the same manner as if he were a citizen of this Commonwealth.

"An alien, the subject or citizen of a friendly state, may take and hold any personal property except chattels real; and any such alien, if he resides within this State, may take and hold any lands for the purpose of residence or of occupation by him or his servants, or for the purpose of any business trade or manufacture, for a term not exceeding 21 years. An alien so taking and holding shall have like rights, remedies and exemptions touching such property as if he were a citizen of the United States."

The statute clearly applies to both resident and non-resident alien enemies, and, *semble,* prevents an alien enemy from taking a bequest even of personal property. It has been held that aliens can take by devise and descent only under the provisions of section 334. White *v.* White (1859), 2 Metc. (Ky.) 185.

Maryland. (Bagby's Annotated Code of Marylands, article 3, section 1):

"Aliens, not enemies, may take and hold lands, tenements and hereditaments acquired by purchase, or to which they would, if citizens, be entitled by descent; and may sell, devise, or dispose of the same, or transmit the same to their heirs, as fully and effectually, and in the same manner, as if by birth, they were citizens of this State."

The statute affects both a resident and non-resident alien enemies, and imposes both an incapacity to devise real property and an incapacity on the devisee to take.

New York. (Laws, 1913, c. 152, section 1):

"Alien friends are empowered to take, hold, transmit and dispose of real property within this State in the same manner as native-born citizens, and their heirs and devisees take in the same manner as citizens."

Semble, both resident and non-resident alien enemies are under an incapacity to dispose of real property within the State, and such persons are also under an incapacity to take as devisees or as heirs. But, *semble,* where the trustee can take, the profits may go to an enemy *cestui que trust,* Marks *v.* McGlynn (1882), 88 N. Y. 357. The disability does not extend to the taking of bequests of personal property. Cp. Beck *v.* McGillis (1850), 9 Barb. (N. Y.) 35; People *v.* Conklin (1841), 2 Hill (N. Y.), 67; McCarty *v.* Terry (1872), 7 Lans. (N. Y.) 236. The devise must be authorized at the time of its taking effect. People *v.* Conklin (1841), 2 Hill (N. Y.), 67; White *v.* Howard (1868), 52 Barb. (N. Y.) 294, affirmed 46 N. Y. 144. See also Laws of 1913, c. 153.

Pennsylvania. (1 Stewart's Purdon's Digest, 13th ed. 299, 300):

"1. Every person being a citizen or subject of any foreign state, shall be able and capable in law of acquiring and taking, by devise or descent, lands or other real property in this Commonwealth, and of holding and disposing of the same in as full and ample a manner as the citizens of this State may or can do, and no such land or estate, so held by devise or descent, shall escheat or be forfeited to the Commonwealth, for or on account of the alienage of such person claiming the same under any last will, or succeeding thereto according to the laws of this Commonwealth.

"2. All such persons shall be able and capable in law to dispose of any goods and effects, to which they may be entitled within this State, either by testament, donation or otherwise; and their representatives, in whatever place they may reside, shall receive the succession, according to the laws of this Commonwealth, either in person or by attorney, in the same manner as if they were citizens of this Commonwealth.

"3. Provided, that nothing herein contained shall be construed to prevent the sequestration of any real or personal estate belonging to any such alien, during the continuance of war between the United States of America, and the state or prince of which such person may be a citizen or subject. (Act February 28, 1791, sections 1–3.)

"4. It shall and may be lawful for any alien or aliens, actually resident within this Commonwealth, and not being the subject or subjects of some sovereign state or power, which is or shall be, at the time or times of such purchase or purchases, at war with the United States of America, to purchase lands, tenements and hereditaments within this Commonwealth, and to have and to hold the same in fee simple, or for any lesser estate, as fully, to all intents and purposes, as any natural-born citizen or citizens may or can do. Provided always, that such alien or aliens shall, previously to such purchase or purchases, declare his or their intention to become a citizen or citizens of the United States, agreeably to any law of the United States, at that time in force upon that subject: and provided also, that no such alien or aliens shall be competent to purchase and hold more than five hundred acres, until he or they shall have actually become a citizen or citizens of the United States.

"5. Where any alien or aliens, resident as aforesaid, may heretofore have purchased any land or other real estate within this Commonwealth, after having declared his intention to become a citizen, in conformity with an act of Congress at that time in force upon that subject, the same purchase shall be as valid to all intents and purposes, and shall be construed to vest the said land or real estate in the said alien or aliens, as fully and absolutely as though the said declaration had been made in conformity to the Act of Congress, entitled, 'An act supplementary to and to amend the act, entitled, "An act to establish a uniform rule of naturalization, and to repeal the act heretofore passed on that subject,"' passed the 18th day of June 1798. (Act February 10, 1807, sections 1, 2.)"

By Acts of March 22, 1814, March 24, 1818, March 31, 1837, April 16, 1844, May 1, 1861, certain purchases of lands by aliens were confirmed. The amount and value of property so confirmed differs in the various acts. It will be noted that under the Act of February 28, 1791, both real and personal property belonging to an alien enemy may be sequestrated during the war. The Act of February 10, 1807, prohibits alien enemies from taking by purchase (which includes devise).

Under the Pennsylvania law, upon the death of an alien, the land that he may have purchased and which he has not devised escheats and vests in the Commonwealth without any inquest of office. Rubeck *v.* Gardner (1830), 7 Watts (Pa.) 458; Cp. Fairfax *v.* Hunter (1813), 7 Cr. 603, 3 L. ed. 453.

Virginia. [Pollard's Code (1904), section 43]:

"Any alien, not an enemy, may acquire by purchase or descent and hold real estate in this State; and the same shall be transmitted in the same manner as real estate held by citizens."

The Code (section 2548) further provides that real estate shall pass by descent to the named classes of heirs "as are not alien enemies."

West Virginia. [Hogg's West Virginia Code (1913), sections 3737, 3738]:

"Any alien, not an enemy, may take and hold, by inheritance or purchase, real estate within this State as if he were a citizen of the State.

"Any such alien may convey or devise any real estate held by him, and if he die intestate, it shall descend to his heirs-at-law; and any such alienee, devisee or heir, whether a citizen or an alien may take under such alienation, devise or descent."

The State constitution provides (article 2, section 5) that "no distinction shall be made between resident aliens and citizens as to the acquisition, tenure, disposition or descent of property." The statute applies to both resident and non-resident alien enemies and imposes both an incapacity to devise and an incapacity to take as devisee or as heir.

Where alien enemies are prohibited from acquiring real estate, no estate vests, as there is no capacity to take. As will be seen from the language of the statutes, there may, in addition, be an incapacity to transfer, where the grantor or testator is an alien enemy.

Difficult questions may also arise under the laws of States which, while attaching no incapacity to take, provide that an alien acquiring lands must dispose of them within a limited time, under pain of forfeiture or forced sale. *Quære*, whether by analogy to the interpretation given to statutes of limitation (see *infra*, p. 307) this period is suspended during the war. It would appear that the same rule should apply.

Bequests to alien enemy.

It is unquestioned that a bequest of personal property to an alien enemy is good at common law and may be enforced after peace. Attorney-General *v.* Wheeden (1699), Park. 267, cited with approval in Fairfax *v.* Hunter (1813), 7 Cr. 603, 3 L. ed. 453. As Chancellor Kent says in Bradwell *v.* Weeks (1814), 1 John. Ch. (N. Y.) 206: "They (the existing laws) impose no forfeiture or confiscation of property, they destroy no right, but only suspend the exercise of certain rights. It is for the sovereign power of the country to determine when, and how far, in cases unprovided for by treaty, the rights and property of alien enemies shall be impaired by war. Without some special act of the government, an alien enemy is not otherwise affected in his former capacity, as alien friend, to hold, acquire and transmit property."

In Estate of Koenigs (1914), 59 Sol. Jour. 130, it was held, in England, that where the executors and residuary legatees named in the will of a British subject were alien enemies, a general grant of administration with the will annexed should be made to the attorney appointed by the executor before the outbreak of the war with directions not to distribute the estate without the leave of the Registrar. This view, however, was not followed in the Estate of Schiff (1915), 59 Sol. Jour. 130, where it was held that the proper person to be appointed to such office was the Public Trustee. In Estate of Grundt (1915), 59 Sol. Jour. 510, in granting under special circumstances a limited administration in the estates of two intestates who were alien enemies to a British subject resident in England, appointed by their respective next of kin, the court observed that in almost all cases where the estates of alien enemies have to be administered, whether the deceased died domiciled in England or abroad, the Public Trustee should in the public interest apply for and obtain the grant of administration.

Upon the judicial settlement of the accounts of an executor or administrator, payments due to enemies from the funds to be distributed should be made either at the end of the war to the enemy himself, or in the meantime to the duly constituted authority of the United States entitled to receive the same. Matter of Kelly (1917), 101 Misc. (N. Y.) 495.

Descent and distribution.

At common law, an alien cannot take by descent. His disabilities in this regard have been removed in England by the Act of Parliament of 1870 (33 & 34 Vic., c. 14), and, *semble,* this rule applies to alien enemies. The same rule obtains in a number of the American States. In others however (see *supra*) an alien enemy is expressly prohibited from taking real property by descent.

The historical reason of the rule against alien enemies taking by descent does not apply to the distribution of personal property. The leading American case is Bradwell *v.* Weeks (1814), 1 John. Ch. (N. Y.) 206, where Chancellor Kent says: "The plaintiffs demand not only their equal portion, but the whole moiety of the personal estate of the intestate, to the exclusion of others who are next of kin in equal degree, because they were alien enemies at the time of the intestate's death. The intestate died without issue, and the statute of distributions, in such case, directs that a moiety of the personal estate shall to to the widow, and the residue 'shall be distributed, equally, to every of the next of kin of the intestate.' The statute did not intend to limit the transmission of personal estate to such of the next of kin as were citizens, in imitation of the law of descents concerning real estate, but the personal estate was intended to pass to the next of kin, whoever, or wherever, they might be. The distinction between aliens and natives, as to the right of succession to chattels does not exist. But it is urged that an alien enemy has no rights, and is incapable of acquiring any. This general proposition is not true, in the unqualified extent in which it has been laid down. By the modern law of nations, and by the law of the land, of which the law of nations is also a part, an alien enemy does not forfeit his rights of property. . . . Without some special act of the government, an alien enemy is no otherwise affected, in his former capacity, as alien friend, to hold, acquire and transmit property, than in the cases to which I have alluded. If he should, by will, bequeath his goods and chattels in this state, or by deed, or writing, assign his choses in action to some alien friend, would not our Court give effect to those acts? But I come to the very point before me, and say that an alien enemy does not lose his capacity to take personal property by succession as next of kin. There is no instance in which such a disability has been declared. It would be repugnant to that spirit of mildness and moderation which now pervades the public law, as it is explained in the commercial codes, and in the writings of the most enlightened jurists. It is not within the reason, or the policy, of the rule of the common law, disabling aliens from taking real estate by descent; that disability, according to Sir Matthew Hale (1 Vent. 417), is founded on this reason, that as the alien cannot keep the freehold, the law, *quæ nihil frustra*, will not cast it upon him. But an alien enemy can keep, and does keep, his personal estate. All his goods, chattels and credits, and all his civil capacities, as incident to personal property, are preserved to him, safe, and untouched, until the return of peace. If the sovereign sequesters the alien's property (as has sometimes been done, in time of war), yet the very meaning of sequestration is a taking in trust, subject to restoration.

(Dig. 16, 3, 6.) When peace returns, the rights of the alien revive in their original force; and, as a general rule, his debtor, whether that debtor be the public or an individual, is answerable even for interest accrued during the season of hostility; for he has had, in the meantime, the enjoyment of the debt. If the debtor dies, or becomes bankrupt, his representative, in the character of executor, administrator or assignee, holds the estate of the debtor, whatever it may be, in trust, for the payment of the alien's debt, as well as the debts of other creditors. An alien is one of the next of kin, within the words of the act, though he is an alien enemy; and the policy of the law is fully and effectually answered by disabling the alien from demanding, and drawing out of the country, his distributive share during the existence of the war; all that the laws of war require is, that we should not benefit the enemy. Any further disability would be a useless relic of ancient barbarity."

The case was appealed, Bradwell *v.* Weeks (1815), 13 John. (N. Y.) 1, and an opinion delivered by Yates, J., in which he sustained the view of Chancellor Kent, but placed the decision partly on the ground of the privilege of a resident alien to dispose of his property. Yates, J., said:

"The principle, that wars ought not to interfere with the personal property of an alien, in an enemy's country, or with the security and collection of debts, has, in modern times, gained ground in all civilized nations. The latest cases in the English courts concur in the opinion, that the ancient severities of war have been much mitigated by modern usages; this is to be attributed, in a great measure, to the more frequent intercourse between citizens of different nations, by means of commerce, the successful handmaid in securing an interchange of sentiments, whereby more liberal and enlarged views are necessarily introduced, contributing, in a great degree, to soften the estranged and cold feelings of nations towards each other, and thus promoting the security and happiness of individual members of every civilized community. Mankind have a relative connection, and there ever must exist a dependence on each other, to which they are subjected by nature; and although nations may not be in the same situation with individuals, in that respect, yet, when there is an intercourse, they ought to be governed by the same common principles of moral obligation. In our country, these enlightened and humane principles have been recognized, as appears by the decision of our courts, founded on the authority of the common law, and the law of nations. . . . I shall not controvert the correctness of the principle laid down by Sir William Blackstone, in his Commentaries, cited by the appellants (1 Black. Com. 372): 'That alien enemies have no rights, no privileges, unless by the king's special favor during the time of war;' but, conformably to this doctrine, I think it may well be urged, in this case, that the benefit of the statute of distributions ought to be extended to the kindred of the deceased, notwithstanding their alienage, as a consequence resulting out of privileges granted to the intestate by our government before his death.

"It does not appear that John Bradwell, the intestate, had become a naturalized citizen of the United States, but that he was an Englishman by birth; and that he, and his brother Benjamin, moved from England to the United States, in 1802. The inference, therefore, is, that he continued an alien, and that he resided in this country, before the war, as an alien friend, and, afterwards, during the war, as an alien enemy, under the protection of government, and in the enjoyment of privileges guaranteed to him by the law of the land. . . . In this case, it does not appear that the intestate has ever, in any way, been molested by any order of government, but has continued to reside here, by permission, as before stated, until his decease. I can see no reason why the rights he enjoyed, as to the destination of his personal property, if he had died during peace, should not (while he thus continued) be secured to him during war. If his relations abroad were entitled to a distributive share in the one case, they are equally entitled in the other. That they would have been permittted to take their shares before the war, in case of his death, will not be questioned. Every member of this Court must know, that the benefit of that rule of law in England has frequently been experienced by citizens here. They ought not, perhaps, to be allowed to recover the property while the war continues; and, in that respect, ought to be placed on the footing of an alien enemy, who is a creditor, not resident here, and, consequently, incapable to prosecute for his debts. But the permission given to the alien to remain, must, in case of his decease, during that period, secure to his alien relatives the ability to take, and, on the return of peace, to recover their shares of his personal property, according to the statute of distributions, in the same manner as if no war had intervened. This cannot be deemed a violation of the principles laid down in the books, that alien enemies have no rights, no privileges, unless by special favor of the government of the country; because it is a consequence necessarily attached to the special favor granted, of remaining in the country during the war. . . . I believe it will be admitted, that the soundest policy of every government, in relation to questions of this kind, is to observe good faith towards foreigners of every description, more especially if they continue their residence, by permission of government, during a war with their country, and not to allow such permission to entrap them, or to produce a disposition of their property different from what would have taken place in a state of peace, and thus suffering manifest injustice to be exercised towards their representatives abroad. To encourage a foreigner to remain with us in time of peace, with an understanding that, according to the law of nations, in the event of his death, his personal estate shall go to his representatives abroad, although aliens; yet, if, unfortunately, a war intervenes, during which he dies, to deprive the same representatives of this property, notwithstanding the permission of government to the intestate to remain in the country until his decease, appears to me to be repugnant to justice and humanity. It, assuredly, must operate as a direct discouragement to that commercial intercourse, so requisite to promote the happiness and prosperity of our country. According to the view, then, which I have taken of the subject, true policy would lead to a course securing to the alien representatives, abroad, the ultimate enjoyment of the personal property of their deceased relative. I am, accordingly, of opinion, that the next of kin of the intestate, residing in England, are entitled to their distributive shares of his personal estate; and that the decree of the Court of Chancery ought to be affirmed."

This view was concurred in by the three justices present as well as by seven senators. Eleven other senators were of opinion that the decree of the Court of Chancery should be reversed. By the casting vote of the presiding officer, the decision in the court below was reversed; "but all the judges were for affirmance, therefore, it has the authority not only of Kent's great name, but that of all the judges who sat upon the case." Williams, C. J., in Crutcher *v.* Hord (1868), 4 Bush (Ky.) 360. See also Page *v.* Pendleton (1793), Wythe's Va. Rep. 211.

Trusts to which an alien enemy is a party.

Subject to the rights of the government, national or State, in regard to enemy property within the jurisdiction, an alien enemy, resident or non-resident, may create a trust in regard to such property in favor of any person, provided that the creation of the trust does not involve a violation of the Act. For example, a non-resident alien enemy may, by an appropriate agreement with any other person not resident within the United States, create such a trust in favor of a person resident within the United States, if the nature of the transaction is such that the assent of the person within the United States is not required. But a person within the United States may not create a trust in favor of an enemy or ally of enemy by an act *inter vivos*, or agree to act as trustee therein, because this would involve entering into a "contract, agreement or obligation" within the definition of "trade" [section 2 (c)] "for or on account of, or on behalf of, or for the benefit of" such enemy. Section 3 (a). On the other hand, a person within the United States may create a trust in favor of a non-resident alien enemy by acts *mortis causa* for such acts though "for the benefit of" an enemy, are not a "contract, agreement or obligation" within the meaning of "trade."

An implied trust may arise in favor of an enemy out of the conduct of a person within the United States, which can be enforced after the war. Crutcher *v.* Hord (1868), 4 Bush (Ky.) 360; Buford *v.* Speed (1885), 11 Bush (Ky.) 338. In the former case it was said that a person within the jurisdiction might purchase at decretal sales real property belonging to a non-resident alien enemy for the benefit of such enemy, but subject to the government's right to confiscate. Such purchase would now be unlawful as being a "buying, dealing with or receiving" the property "for, or on account of, or on behalf of, or for the benefit of" the enemy.

Commercial communications.

(e) To have any form of business or commercial communication or intercourse with.

" To have any form of business . . . intercourse with."

The Act does not prohibit transactions outside the United States between a non-enemy (including a citizen of the United States) and an enemy, or between two enemies, and relating to any property within the United States. The prohibition of the Act, so far as trading is concerned, is directed against trade by "any person in the United States." Section 3 (a). Property within the United States is of course subject to the local jurisdiction, and American ships are subject to special rules.

Conversely, the Act does not prohibit transactions within the United States relating to property or acts in enemy territory where the transaction does not involve any communication with an enemy or is "directly or indirectly with, to, or from, or for, or on account of, or on behalf of, or for the benefit of" an enemy.

In May, 1862, after New Orleans came into the possession of the United States forces, a conveyance of real property in that city, for value, was made between persons who were at the time within the Confederate lines, and who were active supporters of the Confederate cause in the legislative and military branches. It was argued that the conveyance was inoperative and void, on the ground that as the parties were at the time "engaged in the rebellion against the United States, and were within the enemies' country," they could not lawfully transfer title to property situated within the Federal lines. "But," said the Court, "we do not think the position at all tenable. The character of the parties as rebels or enemies did not deprive them of the right to contract with and to sell to each other. As between themselves, all the ordinary business between people of the same community in buying, selling, and exchanging property, movable and immovable, could be lawfully carried on, except in cases where it was expressly forbidden by the United States, or where it would have been inconsistent with or have tended to weaken their authority. It was commercial intercourse and correspondence between citizens of one belligerent and those of the other, the engaging in traffic between them, which were forbidden by the laws of war and by the President's proclamation of non-intercourse. So long as the war existed, all intercourse between them inconsistent with actual hostilities was unlawful. But commercial intercourse and correspondence of the citizens of the enemy's country among themselves were neither forbidden nor interfered with, so long as they did not impair or tend to impair the supremacy of the national authority or the rights of loyal citizens. No people could long exist without exchanging commodities, and, of course, without buying, selling, and contracting. And no belligerent has ever been so imperious and arbitrary as to attempt to forbid the transaction of ordinary business by its enemies among themselves. No principle of public law and no consideration of public policy could be subserved by any edict to that effect; and its enforcement, if made, would be impossible. . . . The sale in the case at bar can only be impeached, if at all, by reason of the situation of the property within the Federal lines. And from that circumstance it could not be impeached, unless the sale, if upheld, in some way frustrated the enforcement of the right of seizure and confiscation possessed by the United States. . . . A conveyance in such case would pass the title subject to be defeated, if the Government should afterwards proceed for its condemnation. And to declare this liability was the object of the provision in the Confiscation Act, enacting that 'all sales, transfers, and conveyances' of property of certain designated parties made subject to seizure should be null and void. The invalidity there declared was limited and not absolute. It was only as against the United States that the transfers of property liable to seizure were null and void. They were not void as between private parties, or against any other party than the United States. This was held in the case of Corbett *v.* Nutt, reported in the 10th of Wallace. . . . This case is much stronger than that of Fairfax's Devisee *v.* Hunter's Lessee, reported in the 7th of Cranch, which received great consideration by this court. There a devise to an alien enemy resident in England, made during our Revolutionary war by a citizen of Virginia, and there residing at the time, was sustained, and held to vest a title in the devisee which was good until office found. . . . If an alien enemy can, by devise or purchase from a loyal citizen or subject, take an estate in the country of the other belligerent, and hold it until office found, there would seem to be no solid reason for refusing a like efficacy to a conveyance from one enemy to another of land similarly situated. A different doctrine would unsettle a multitude of titles passed during the war between residents of the insurrectionary territory temporarily absent therefrom whilst it was dominated by the Federal forces." Conrad *v.* Waples (1877), 96 U. S. 279, 24 L. ed. 721; 7 Moore, International Law Digest, section 1136.

In Kershaw *v.* Kelsey (1868), 100 Mass. 561, 97 Am. Dec. 124, a lease of a plantation in Mississippi made within that State during the Civil War by a citizen and resident thereof to a citizen of Massachusetts then in Mississippi, at a rent payable and paid in part in cash on taking possession of the plantation, and the rest payable out of the crops to be raised thereon, and by which the lessor agreed to receive and pay for corn then on the plantation and which was immediately delivered accordingly and used thereon, was sued on in Massachusetts. The defendant contended that the lease having been made during the Civil War was void both under the principles of international law and under the Act of Congress of July 13, 1861, and the Proclamations under that Act. The Court, per Gray, J., said: "This case presents a very interesting question, requiring for its decision a consideration of fundamental principles of international law. It is universally admitted that the law of nations prohibits all commercial intercourse between belligerents without license from the sovereign. Some dicta of eminent judges and learned commentators would extend this prohibition to all contracts whatever. In a matter of such grave importance, the safest way of arriving at a right result will be to examine with care the principal adjudications upon the subject, most of which were cited in the argument. The celebrated judgment of Sir William Scott, in the leading case of The Hoop, 1 C. Rob. 196, determined only that all trading with a public enemy, unless by permission of the sovereign, was interdicted; and that all property engaged in such trade was lawful prize of war. None of the numerous authorities there cited went beyond this. The principal reason assigned is, that in a state of war the question when and under what regulations commercial intercourse, which is a partial suspension of the war, shall be permitted, must be determined, on views of public policy, by the sovereign, who alone has the power of declaring war and peace; and not by individuals, upon their own notions of convenience, and possibly on grounds of private advantage, not reconcilable with the general interest of the state. In the case of The Indian Chief, 3 C. Rob. 22, the same principle was applied to the case of a foreign merchant resident in the British possessions in India. And all the later cases in the same court were of trading or licenses to trade with the enemy, directly or indirectly. It is true that, in the case of The Hoop, that eminent jurist does also somewhat rely upon the consideration of the total inability to enforce any contract by an appeal to the tribunals of the one country on the part of the subjects of the other. The rule is certainly well settled that during any war, foreign or civil, an action cannot be prosecuted by an enemy, residing in the enemy's territory, but must be stayed until the return of peace, or, in the words of the old books, *donec terræ sint communes.* Staunf. Prerog. fol. 39. Co. Lit. 129 b. Sanderson *v.* Morgan, 39 N. Y. 231. Wheelan *v.* Cook, 29 Maryl. 1. But that rule temporarily restrains the remedy only, without denying or impairing the existence of the right; as was said by the Supreme Court of New York, while Chancellor Kent presided there, 'The present plea only bars the plaintiff, in his character of alien enemy commorant abroad, from prosecuting the suit; it does not so much as touch the merits of the action.' Bell *v.* Chapman, 10 John. 185. That it has nothing to do with the validity of the contract sued upon is manifest from the case of a ransom bill, which is universally admitted to be a lawful contract, and yet upon which no action can be maintained in a court of common law during the war, but may after the return of peace. Ricord *v.* Bettenham, 3 Burr. 1734; s. c. 1 W. Bl. 563. Anthon *v.* Fisher, 2 Doug. 650; s. c. 3 Doug. 178. Brandon *v.* Nesbitt, 6 T. R. 28. 1 Kent Com. (6th ed.) 107." Accord: Shaw *v.* Carlile (1872), 9 Heisk. (Tenn.) 594.

Charles S. Morehead, a citizen of Kentucky, owned two plantations in Mississippi. In the spring of 1861, when the Civil War began, he was on these plantations, but in the following May or June, when a long struggle seemed inevitable, he placed one in charge of his son and the other in charge of an overseer and returned to Kentucky. It did not appear that afterwards during the continuance of the war he had any communication with either of those persons. In April, 1862, being then in Kentucky, he sold to another citizen of the State, in payment of indebtedness, the cotton to be grown on the plantations during that year; but there was no agreement to transport and deliver it across the lines separating the insurrectionary States from those that adhered to the Union. The year's crop, however, or the greater part of it, was afterwards captured and sold by the United States forces and the proceeds paid over or accounted for to the Treasury.

Field, J., delivering the opinion of the Court, said: "Though at the time the sale, or assignment, as it is termed in the Act of Congress, was made of the cotton on the plantations in Mississippi, or to be raised thereon during the year 1862, the late Civil War was flagrant, there was no rule of law arising from the existence of hostilities between the different sections of the country which in any respect impaired the validity of the transaction. Both parties were then residents and citizens of Kentucky, and no agreement was made for the transportation and delivery of the cotton across the lines separating the insurrectionary States from those which maintained their loyalty and adhered to the Union. Morehead, the owner, was in the spring of 1861, at the commencement of the war, on the plantations in Mississippi; and in May or June following, when a prolonged struggle seemed inevitable he placed one of them in charge of his son and the other in charge of an overseer, and returned to Kentucky. It does not appear that ever afterwards during the continuance of the war he had any communication with either. They superintended the plantations, and in 1862 raised a crop of cotton thereon, the greater part of which, if not the whole, was afterwards seized by the forces of the United States, placed in the custody of an assistant quartermaster of the army, sold by him, and the proceeds paid over or accounted for to the Treasury of the United States. . . . The property in this case (Conrad *v.* Waples) was real estate; but we do not perceive how that fact would alter the validity of a transaction, if it could be affected by the character of the parties. If residents of the enemy's country may contract for property situated within it, there would seem to be no objection to similar transactions by persons residing outside of the Confederate lines and adhering to the national government, so long as no intercourse or connection is kept up with the inhabitants of the enemy's country. As stated in the case from which we have cited, it was commercial intercourse and correspondence between citizens of one belligerent and the other, and the engagement in traffic between them, leading to the transmission of money or property from one belligerent country to the other, which was forbidden. There was, therefore, nothing in the sale of the cotton on the plantations, or of cotton to be raised thereon, there being no agreement respecting its movement across the border of the contending sections, which brought the transaction within the prohibitions of any rule of international law or the proclamations of the President of the United States in 1861." Briggs *v.* United States (1891), 143 U. S. 346, 36 L. ed. 180.

"The fact that a mortgage was made in enemy territory to a loyal citizen of the United States does not necessarily imply unlawful intercourse between the parties contrary to the Proclamation of the President of the date of August 16, 1861, 12 Stat. 1262, under the authority of the Act of July 13, 1861, c. 3, sect. 5, 12 Stat. 257. That transactions within Confederate lines affecting loyal citizens outside were not all unlawful was decided in United States *v.* Quigley, 103 U. S. 595. To make a case for removal the answer should have set forth the facts which rendered the mortgage void under the Non-Intercourse Act and the Proclamation thereunder. There has been no attempt to do this." Carson *v.* Dunham (1887), 121 U. S. 421, 30 L. ed. 992.

In Morris *v.* Poillon (1874), 50 Ala. 403, a transfer of a promissory note physically within enemy territory was upheld. Peters, C. J., said: "The evidence tends to show, that Whitlock & Co., the assignors of the note in suit, and the plaintiffs, the assignees, at the time of the alleged assignment were citizens of the State of New York, and that the assignment was made in the city of New York. Then, though the assignment was made during the late war, there is nothing in this evidence to show that either of the parties was dealing with a public enemy. They were citizens of the same government, dealing with each other at home, and not with the enemy. This is not forbidden. The note was at that time in this State, when its people were in insurrection against the government of the United States. This did not defeat any right in the owner to transfer the note to any other person, who could become its legal owner. The seizure by the receiver of the Confederate States government then having military control of this State, did not in any way interfere with the owner's right to transfer the note. The Confederate government was a nullity, and the receiver or other agents of that government could not derive any power, except that of mere force, to seize the property of the citizen under its authority. The acts of such agents were wholly void. In law, they were nothing. If the note had been lost to the owner by this interference, the receiver would have been personally liable for the damages which such loss may have occasioned."

The distinction is brought out by a comparison of these cases with that of Montgomery *v.* United States (1872), 15 Wall. 395, 21 L. ed. 97. Montgomery, a British subject domiciled in New Orleans before and during the war of the rebellion, after the capture of that city by the forces of the United States, in April, 1862, made a written agreement with J. W. Burbridge, a loyal person residing in that city, doing business as Burbridge & Co., and the factor and agent of one Leo Johnson, a planter, residing at that time in the parish of La Fourche, Louisiana, and within the enemy's lines, by which Burbridge & Co., as "the agents of the said Johnson, declared that they had sold, and thereby did sell unto the said R. H. Montgomery, 'the following crop belonging to said Johnson, on his plantation, in the parish of La Fourche, near La Fourche Crossings, to wit: 605 hogsheads of sugar, 700 barrels of molasses, and 300 barrels of rum, at the following prices, to wit: For the sugar, at 4½ cents per pound; for the molasses, at 20 cents per gallon; and for the rum, at 50 cents per gallon, the weight and quantity to be determined at the time and upon the delivery thereof in New Orleans.'" A part of the purchase price was paid at the time the agreement was entered into and further sums were paid subsequently. Burbridge gave an order of delivery of the goods but as the same were within the territory occupied by the Confederate forces, no actual delivery of possession was taken of any part. In September, 1862, the General commanding the forces of the United States at New Orleans issued a proclamation whereby among other things, all the property within the district where the goods in question were, was sequestrated, and all sales and transfers forbidden and declared to be invalid. The government forces took possession of the plantation. The goods were sold and the proceeds paid into the Treasury of the United States. Strong, J., said: "Whether the contract under which the appellant claims to have become the owner of the sugar, molasses, and rum was so far executed that, without more, it would have passed the property, had it been legal, it is unnecessary to consider; for we are of opinion that, whether executed or executory, it was illegal and void. It was a clear case of trading with a public enemy. The subject of the contract was personal property within the Confederate lines. It was a crop at the time on the plantation of Leo Johnson, in the parish of La Fourche, near La Fourche Crossings. It belonged also to Johnson, who was then domiciled in the enemy's territory, and who was himself an enemy. This is expressly stated in the contract itself. The appellant's right, therefore, is founded upon an attempted purchase, during the war, from an enemy, of enemy's property, in direct violation not only of the laws which always prevail in a state of war, but also in violation of the acts of Congress. It is vain to contend that any right can be acquired under such a contract. It is true the sale was negotiated by agents of Johnson, living outside of the enemy's territory, but it was not the less his act because it was done by those acting under his authority. Nothing is clearer, says President Woolsey (International Law, Sect. 117) than that all commercial transactions of whatever kind (except ransom contracts), with the subjects, or in the territory of the enemy, whether direct or indirect, as through an agent or partner who is neutral are illegal and void. This is not inconsistent with the doctrine that a resident in the territory of one belligerent may have in times of war an agent residing in the territory of the other belligerent, to whom his debtor may pay the debt, or deliver property in discharge of it. Such payments or deliveries involve no intercourse between enemies. The present case exhibits a transaction not wholly within enemy's territory, but a sale from an enemy to a friend. If that can be made through an agent, then the rule which prohibits commercial intercourse is a mere regulation of the mode of trade. It may be evaded by simply maintaining an agency in the enemy's territory. In this way every pound of cotton or of sugar might have been purchased by Northern traders from those engaged in the rebellion. Perhaps the rule is stated too broadly in Woolsey's Commentaries, and in many elementary books, but it is certain that 'every kind of trading or commercial dealing or intercourse, whether by transmission of money or of goods, or orders for the delivery of either between two countries (at war), directly or indirectly, or by contracts in any form looking to or involving such transmission,' are prohibited. (Kershaw *v.* Kelsey, 100 Mass. 561.) The contract in this case contemplated the delivery of the sugar, molasses, and rum at New Orleans, then within the Federal lines. There, on its being weighed and measured, payment was to be made to Johnston's agents. If this be allowed, the enemy is benefited and his property is protected from seizure or confiscation." See also the views of Griffith, C. J., in Moss and Phillips *v.* Donohoe (High Court, 1916), 20 Com. L. R. 580, quoted, *infra*, p. 141.

The maintenance of an agency in enemy territory for the purpose of conserving property interests and where no communications are made, is not prohibited. In United States *v.* Quigley (1880), 103 U. S. 595, 26 L. ed. 524, the claimant was domiciled in Georgia in 1860 and doing business as a merchant. About the time the State seceded he left his home and his business and went to Indiana, where he remained until the end of the war. Before leaving he appointed an agent to manage for him while he was gone. This agent, in 1864, bought for him, with moneys collected or acquired on his account, two bales of cotton that were afterwards captured by the military forces of the United States at Savannah. The proceeds were paid into the Treasury under the Abandoned and Captured Property Act. On these facts the Court of Claims rendered judgment against the United States, and to reverse that judgment an appeal was taken. Waite, C. J., said: "As was very properly said by the court below, if this claimant had remained at home in his native State and served the Confederacy during the entire war, acquiring his money and buying his cotton himself, this judgment would be right. No actual change of his domicile is shown, and his agent has done for him no more than he might himself have lawfully done if he had stayed where his property was. In no just sense was he trading across the lines with the enemy through the operations of this agent. He was simply saving what he had been compelled to leave, in order to avoid becoming in law an enemy of his government. His property being in enemy territory was enemy property, and subject to capture as such; but he was both in law and in fact a friend. The agency he left behind was only to manage what he could not take away; and as the money invested in the cotton was collected or acquired through this agency, we will presume it was obtained at the place he left rather than sent through the lines. If the facts were otherwise, the United States should have caused it to be so found. No other reasonable construction can be given to the findings as they appear in the record than that the cotton is the proceeds of the property invested in the business the claimant was compelled to abandon in order to avoid becoming personally implicated in a rebellion against his government."

In W. L. Ingle *v.* Mannheim Insurance Company [1915] 1 K. B. 227, it was held that a claim to recover a loss under a policy made against the branch of an enemy insurance company was not a "transaction" within clause 5 of the Proclamation of October 8, 1914, prohibiting transactions with branches of enemy insurance companies.

A tender to a person within the United States of a bill of lading entered into by the master of an enemy ship is not a good tender because of the prohibition of commercial intercourse. Birkbeck & Rose-Innes *v.* Hill, South African L. R. [1915] Cape, 687, following Arnhold Karberg & Co. *v.* Blythe, Green & Jourdain & Co. (1915), 113 L. T. 185.

The sending of a communication of a commercial character to an enemy would also be in violation of section 3 (c). But neither section 3 (c) nor the present subsection prohibit the mere receipt of business communications from an enemy.

Prohibitions against trade.

SEC. 3. That it shall be unlawful—

(a) For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act, to trade, or attempt to trade, either directly or indirectly with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

See notes to section 2, where a number of additional cases are discussed.

"Any person in the United States."

For meaning of "person" see section 2, *supra*, p. 90.

Clearly no person can be held liable criminally for a violation of the provisions of this Act if at the time when the alleged violation was committed, he was not within the territorial limits of the United States. His property, however, within the jurisdiction may become liable to confiscation, and his agents acting in his behalf may become criminally liable. But certain acts on the part of a citizen of the United States, even if done outside the territorial limits of the United States, may amount to treason (U. S. Penal Code, section 1) or to a violation of the "Logan Act," for the provisions of which see, *supra*, p. 83. American vessels in the service of an enemy government are liable to confiscation. The Zambesi (New South Wales, 1914), 1 Trehern P. C. 358. And the owners, master and crew may be guilty of treason.

While the Act covers only acts done "in the United States" the question arises as to the validity of acts done outside of the United States, where the persons left the United States solely or principally in order to evade the provisions of the law. Clearly, persons, whether American citizens or aliens, transiently within the United States, are only bound to comply with the provisions of the law while they are within the territorial jurisdiction of the United States. Regarding aliens transiently within the jurisdiction, the High Court of Australia, Berwin *v.* Donohoe (1915), 21 Com. L. R. 1, said, per Griffith, C. J., Gavan Duffy, J., and Rich, J.: "We should, however, be very loth to hold that, if a neutral on a visit to a British possession takes advantage of the post office to ask his agent in his own country to pay a debt for him there to an enemy, he is guilty of attempting to trade with the enemy within the meaning of the Proclamation of 9th September 1914, or at common law." But this view is repudiated by Isaacs, J. See Rex *v.* Kupfer [1915] 2 K. B. 321.

Where a person leaves the United States temporarily and for the purpose of evading the provisions of this law, it would seem that at least all of the civil consequences of nullity and the penalty of confiscation of the property involved, would attach to the act. But it is doubtful whether any criminal liability attaches, as the Act does not show any intent to make it extra-territorially operative. But a person leaving the United States with the intention of acquiring a domicile or a residence of some permanence outside of the jurisdiction, thereby ceases to be subject to the provisions of this Act.

In Mitchell *v.* United States (1874), 21 Wall. 350, 22 L. ed. 584, the claimant and appellant, Mitchell, at the beginning of the Civil War, lived in Louisville, Kentucky, where he was engaged in business. Swayne, J., in upholding the judgment of confiscation says: "This case turns upon the point whether the appellant was domiciled in the Confederate States when he bought the cotton in question. When he took his departure for the South he lived and was in business at Louisville. He returned thither when Savannah was captured and his cotton was seized. It is to the intervening tract of time we must look for the means of solving the question before us. There is nothing in the record which tends to show that when he left Louisville he did not intend to return, or that while in the South he had any purpose to remain, or that when he returned to Louisville he had any intent other than to live there as he had done before his departure. . . . When the claimant left Louisville it would have been illegal to take up his abode in the territory whither he was going. Such a purpose is not to be presumed. The presumption is the other way. To be established it must be proved. . . . Among the circumstances usually relied upon to establish the *animus manendi* are: Declarations of the party; the exercise of political rights; the payment of personal taxes; a house or residence, and a place of business. All these *indicia* are wanting in the case of the claimant. The rules of law applied to the affirmative facts, without the aid of the negative considerations to which we have adverted, are conclusive against him. His purchase of the cotton involved the same legal consequences as if it had been made by an agent whom he sent to make it."

"Except with the license of the President, granted to such person or to the enemy or ally of enemy."

As to licenses see section 5, and notes. The license need be granted only to one of the parties. Hence, where a branch of an enemy firm in the United States has received a license all persons may deal with it freely as to all matters within the scope of the license.

Where a contract relating to the performance of acts prohibited by law provides that clearances, licenses or permits are to be obtained for the purpose, an intention to comply with, and not to violate, the law is shown, and the contract is valid. Schacklett *v.* Polk (1875), 51 Miss. 378.

An averment that the trade was not under license is not necessary. The effect of the license is to supersede the general law. "It would seem to be no more necessary to aver that such license could not be obtained than to aver that it was not practicable to obtain a repeal of an Act of Parliament." Per Pollock, C. B., in Esposito *v.* Bowden (1857), 7 Ellis & B. 763.

"To trade or attempt to trade."

For meaning of "trade" see section 2, and notes, *supra*, p. 98.

An attempt to trade with the enemy as distinguished from actual trading requires no communication with the enemy. The dispatch of goods or the sending of a letter as the first or intermediate step in a combined process, which, if fully carried out, would constitute a trading with the enemy, is itself an attempt to trade with the enemy. Berwin *v.* Donohoe (High Court, 1915), 21 Com. L. R. 1; Rex *v.* Kupfer [1915] 2 K. B. 321. The offense is complete the moment a vessel sails with intention to carry her cargo to a hostile port. The Rugen (1816), 1 Wheat. 62, 4 L. ed. 37. Under the Act of July 13, 1861, which prohibited every act done towards the execution of a design to carry on without a permit a commercial intercourse with the enemy, it was held there was a violation of the Act not only when a vessel has actually sailed with the goods on board, but the moment the goods are started, even on land, towards the forbidden destination. It was further held that the application for a permit is evidence of the intention to proceed and the use of fraudulent invoices shows the intention to be fraudulent. The shipment of the goods under color of the permit is a step taken in execution of that fraudulent intent and is the overt act. Such goods are "proceeding to" the interdicted port within the meaning of the Act of July 13, 1861, and the shipper, under the Act of May 20, 1862, is guilty of an attempt to export them in violation of law. United States *v.* One Hundred Twenty-nine Packages (1862), F. C. No. 15,941.

Regarding the transmission of letters, it was said in H. M. Advocate *v.* Innes (1915), 52 Scot. L. Rep. 275: "Although the writing of the letter would merely have been preparation, the posting of the letter is an overt act by which the proposal, or the attempt, to supply goods may have been made, and accordingly, although it may be open to the accused to show that that was not the intention of the posting of the letter, and that it indicated no more than mere preparation, the jury will have to consider that upon the facts of the case. All I at present determine is that the posting of the letter may be the overt act which is essential to the commital of the crime."

The offense of inciting to trade with the enemy is governed by the ordinary principles regarding inciting to the commission of an offence. In Rex *v.* Spencer (1915), 112 L. T. 479, the appellant was indicted upon a charge of soliciting and inciting persons to trade with the enemy. Evidence was given to the effect that he had made a proposal to a British firm in respect of a transaction, which, if carried out without a license, would have constituted an offense against the English Act. In the course of the negotiations nothing was said by appellant as to the obtaining of a license. The appellant was convicted, and it was held that the jury were entitled to come to the conclusion that there was no condition in the proposal made by the appellant that a license should be obtained, and that consequently an offense had been committed.

" Directly or indirectly."

The sending of an agent out of a country to do acts forbidden under the Act is a violation thereof. Desmare *v.* United States (1876), 93 U. S. 605, 23 L. ed. 959.

The same rule applies to indirect trading through an intermediary not in the position of an agent. In H. M. Advocate *v.* Innes (1915), 52 Scot. L. Rep. 275, it was said: "Now, in the first place, it is objected that inasmuch as the letter was not addressed to an enemy, or to anyone who is said to have acted in a representative capacity on behalf of an enemy, it does not constitute the crime set out in the statutes and the Royal Proclamation. I am of opinion that that objection is not well founded. A trader in this country who desires, or has an intention, or proposes, to trade with the enemy may well select as an intermediary any person resident in a neutral country, even although that person is not at the time when the communication is addressed to him a representative either of the proposed buyer or the proposed seller. The statutory crime is that of indirectly supplying goods or procuring the supply of goods, or trading with the enemy, and one of the ways in which a man may indirectly effect his purpose is by selecting an intermediary through whose intervention he will secure his aim, and it does not appear to me to be necessary to say that that intermediary is at the moment when he is selected the active agent or representative of the intending purchaser or the intending seller."

To the same effect is Moss and Phillips *v.* Donohoe (High Court, 1915), 20 Com. L. R. 580, where Isaacs, J., says: "One reason given by learned counsel for the appellants why they do not come within the terms of the Act and Proclamation should be specially mentioned. It was that a neutral has a perfect right to trade with an enemy country and therefore, so long as the contractual relations of the appellants were confined to the neutral, no trading with the enemy could be imputed to them. The answer is twofold. First, as the prohibition is to a subject and is against procuring goods from the enemy, it is plain that the employment of an innocent intermediary to effect the first necessary step cannot absolve the subject from his duty to his sovereign. The next is closely allied to the first. The neutral abroad owes no allegiance to our sovereign, and is not amenable to our laws, and may without violating them, obtain what goods he pleases from a belligerent. But that does not clothe a British subject with immunity from responsibility to the King if he joins in the act by employing the neutral to do it with the ultimate object of having the goods passed to himself."

So also Field, J., in United States *v.* Grossmayer (1869), 9 Wall. 72, 19 L. ed. 627: "The business intercourse through a middleman . . . is equally within the condemnation of the law." Sending property to or from the enemy state covered by the name of neutral is within the Act. The Rugen (1816), 1 Wheat. 62, 4 L. ed. 37.

" With."

For a consideration of contracts entered into with alien enemies, see *supra*, p. 109. See Rex. *v.* Snow (1917), 23 Com. L. R. 256.

" To."

The dispatch of goods, money, or other articles, or any business or commercial communication is within the Act. The transmission of non-commercial communications is prohibited under section 3 (c). The conveyance of passengers for hire is within the prohibition. The Rose in Bloom (1811), 1 Dod. 58.

Proceeding to an enemy port for cargo, after knowledge of the war, even from a non-hostile port, is prohibited. The Rapid (1814), 8 Cr. 155, 3 L. ed. 520; The St. Lawrence (1814), 8 Cr. 434, 3 L. ed. 615; The Joseph (1814), 8 Cr. 451, 3 L. ed. 621. See also United States *v.* One Hundred and Twenty-nine Packages (1862), F. C. No. 15,941.

" From."

As regards American vessels, there is a prohibition against trading from any enemy or ally of enemy port, whether such trade be between the hostile port and the United States or between a hostile port and any other port. The Rugen (1816), 1 Wheat. 62, 4 L. ed. 37. A citizen residing within the enemy country is entitled to collect his effects, and may bring them into his own country. The John Gilpin (1863), Blatchf. P. C. 661, F. C. No. 7344; The Gray Jacket (1866), 5 Wall. 342, 18 L. ed. 646. But he must do so within a reasonable time. Cp. The Rapid (1814), 8 Cr. 155, 3 L. ed. 520. And *semble*, eleven months after the outbreak of the war is too late. The St. Lawrence (1814), 8 Cr. 434, 3 L. ed. 615. Where there are treaty provisions, as in the case of the Treaty of 1799 between the United States and Prussia (see *supra*, p. 38), it seems that the full period stipulated in the treaty and a reasonable time thereafter should be allowed. And the same rule should apply where the enemy government has impeded the departure of a person or the dispatch of a vessel or goods. The Madonna della Gracie (1802), 4 C. Rob. 195.

But a citizen may not, after war is declared, send a ship to an enemy country even for the sole purpose of obtaining his property there situated. The Rapid (1814), 8 Cr. 155, 3 L. ed. 520; The Venus (1814), 8 Cr. 253, 3 L. ed. 553. Johnson, J., in The Rapid (as above) uses the following "quaint language" [per Sir Samuel Evans, P., in The Panariellos (1915), 1 Lloyd's P. C. 364]: "We are aware that there may exist considerable hardship in this case; the owners, both of vessel and cargo, may have been unconscious that they were violating the duties which a state of war imposed upon them. It does not appear that they meant a daring violation either of the laws or belligerent rights of their country. But it is the unenvied province of this court to be directed by the head, and not the heart. In deciding upon principles that must define the rights and duties of the citizen and direct the future decisions of justice, no latitude is left for the exercise of feeling."

The doctrine of these cases has been severely criticised by Bentwich, War and Private Property, 50: "This verdict of a majority of the United States Supreme Court was an application of the letter which entirely defeated the spirit of the law, and almost a *reductio ad absurdum;* for it amounted to impoverishing loyal subjects who in the interests of their country's trade had migrated, without giving them the option of showing whether in changed circumstances they would return to their country of origin. As Marshall, C. J., in his dissenting opinion said, 'Reason and justice required that question to be left open to be decided before the goods were condemned.'" The decision in The Rapid is also criticised by Cator, P., in The Lutzow (H. B. M. Prize Court for Egypt, 1916), 2 Trehern P. C. 122.

According to the English view, a British subject surprised by the outbreak of the war between Great Britain and the country where such person has a commercial domicile, is allowed time to free himself from his commercial engagements and to effect a removal of his property. Nigel Gold Mining Co. *v.* Hoade [1901] 2 K. B. 849; In re Mashona (1900), 17 Cape of Good Hope (S. C.) 135.

The shipping of a cargo from an enemy port even in a neutral vessel is prohibited. Esposito *v.* Bowden (1857), 7 Ellis & B. 763.

The question has also arisen as to whether funds can be withdrawn from an enemy country; regarding these, it has been said: "The argument that the effect of drawing the bill in the present case was to remove the plaintiff's funds from Georgia to New York, and that, therefore, the contract was not within the spirit of the prohibition, cannot be maintained. Even if the transaction had the effect claimed, yet, if not licensed by our government, it would come within the general prohibition. Nations at war, adhere to these interdictions for reasons of general policy, although in special cases they may recoil upon themselves." Per Rapallo, J., in Woods *v.* Wilder (1870), 43 N. Y. 164, 3 Am. Rep. 684. See also State Bank *v.* Woodsen (1868), 5 Coldw. (Tenn.) 176. Such act is now prohibited under the Act.

The procuring of goods, wares and merchandise, the property of the defendant, from an enemy country, was held to be an offense within the meaning of the Proclamation of August 5, 1914, although no payments were made or to be made. Lord Reading, C. J., says: "We are satisfied that where goods are supplied from the enemy country under a commercial contract, or in consequence of commercial relations, or as a result of commercial intercourse between the enemy and the British subject, that amounts to obtaining goods within the meaning of the Proclamations. The words 'obtain from' are used as the correlatives of 'supply to,' and the matter becomes even more clear if, as one is entitled to do, one changes the phraseology and reads it as if it were 'to supply from the said Empire.' Putting it in that way, which is not an unfavourable way for the appellants, it appears to us plain in this case that the judge rightly directed the jury that as a matter of law the case came within the Proclamations and that there was in law an obtaining of goods, wares, or merchandise within the language of the Proclamations. That being so, the conviction of both the appellants must stand." Rex *v.* Oppenheimer and Colbeck [1915] 2 K. B. 755.

The mere receipt of money or goods, not sent in pursuance of a request therefor, from an enemy, is not in violation of the Act. And the mere receipt of premiums by an insurance company from an alien enemy is not unlawful. In Seligman *v.* Eagle Insurance Company [1917] 1 Ch. 519, Neville, J., says: "I also think it cannot possibly be said here that mere receipt of the premiums by the company is unlawful intercourse with the enemy, and that really is the whole question. The payment itself cannot be illegal. Then, having regard to the result of the payment, can it be illegal? I say 'no,' because as regards the enemy alien himself he gains nothing by the transaction while he is an enemy alien. . . . There will be a declaration that . . . the payment and receipt of premiums are not unlawful intercourse with an alien enemy." Cp., however, the English Proclamation of September 9, 1914, section 7.

There are, however, dicta in American cases to the effect that the receipt of premiums is prohibited. Cp. Mutual Benefit Life Insurance Co. *v.* Hillyard (1874), 37 N. J. L. 444; but cp. Worthington *v.* Charter Oak Life Insurance Co. (1874), 41 Conn. 372, 19 Am. Rep. 495. The view set forth in the English case above cited seems the better, and is in accord with the actual practice of the English insurance companies during the present war. It in no way benefits the enemy during the war, and under the doctrine that he is entitled to pay the premiums due after the war, and thereby put the policy in full force, there is every consideration of public policy in favor of allowing the receipt of such moneys during war. It was said, per Cushman, D. J., in Lindenberger, etc., Co. *v.* Lindenberger (1916), 235 Fed. 542: "War is a very practical science. The thing aimed at—both at common law and under statutes—is to prevent assistance in any form reaching the enemy. The opportunity to take something from the enemy is not denied, unless it involves an exchange. Indeed, taking from the enemy is one of the practices, if not the objects of war."

Under this head may also be brought the cases of a negotiation with a neutral in a neutral country regarding property in an enemy country. Of these transactions it has been said (per Griffith, C. J., dissenting on the facts) in Moss and Phillips *v.* Donohoe (High Court, 1916), 20 Com. L. R. 580): "It has never, so far as I know, been decided that a negotiation with a neutral in a neutral country with respect to property which is at the moment in an enemy country, and which the neutral has used or is using all diligence to withdraw from that country is trading with the enemy. . . . But there is a distinction between the position of a national and that of a neutral. If goods, the property of a British subject, are in an enemy country, a contract made by another British subject with him for the sale of the goods and their removal from the country by the vendor is illegal. But why? Because it involves intercourse by a British subject with the enemy country. The same principle, I think, applies to a contract made by a neutral to sell to a British subject goods which are in an enemy country, if the British subject intends that they shall be removed by the neutral for the purpose of fulfilling the contract. But if a contract between a British subject and a neutral or even between two British subjects does not involve the removal of the goods the subject-matter of the contract from the enemy country, I conceive that it would not be illegal, even though it happens that the goods are there. In any other view of the law if a British subject being in an enemy country at the outbreak of war escapes from it, leaving goods behind him which he is unable to remove, he cannot lawfully sell them to another British subject who is perhaps compelled to remain there, or enter into a contract of insurance in respect of them. There is no authority in support of such a position. For these reasons I am of opinion that the mere fact that goods may be in an enemy country at the date of a contract made with respect to them does not *per se* invalidate the contract." See also the cases discussed *supra,* p. 125.

" For, on account of, or on behalf of, or for the benefit of."

See section 7(b) and notes thereto.

All acts done on behalf of or resulting in direct benefit to an enemy or ally of enemy, are prohibited. At common law, payment or performance to a resident agent of the alien enemy is allowed; see, *infra,* pp. 269-278. The agent could continue to act.

A payment of a debt due from an alien enemy to a neutral is a violation of the law. In Rex *v.* Kupfer [1915] 2 K. B. 321, the appellant had been convicted of trading with the enemy because he had paid to a firm in Holland, a debt due by a branch of his firm in Germany. The Court of Criminal Appeal affirmed the verdict. It was argued that the payments were not for the benefit of alien enemies. A firm known as Bettman & Kupfer traded in London, Frankfort and other places and consisted of two brothers of the appellant who lived in Frankfort and carried on the business there and the appellant who lived in London and carried on the business at that place. The main activities of the London partner consisted of the collection of moneys due for goods sold which moneys were then remitted to Frankfort, and it does not appear that prior to the war the appellant had any business dealings with the Dutch firm. The Dutch firm, after the outbreak of the war, advised the appellant that they would continue to do business with him on the basis of the old contract only on condition that the amount due by the Frankfort firm would be paid. A partial payment of this debt was thereupon made. It was argued that payment to a neutral under the circumstances was not a payment for the benefit of an enemy. It was further argued that as the appellant would be liable to pay if sued, a voluntary payment should not be regarded as a violation of law. The court emphasized the fact that no demand for payment was made by the Dutch creditor and intimated that if payment had been made under a threat of legal proceedings, the defendant might have been justified. So too it was held under the Australian Act that the payment of an installment of purchase money to an agent of an enemy, is a payment on behalf of the enemy. In re White (1915), 15 S. R. (New South Wales) 217. Accord: Orenstein & Koppel *v.* Egyptian Phosphate Company (1914), 2 Scot. L. Rep. 293.

A contract made within the country under the terms of which personal property within the jurisdiction is placed at the disposal of an alien enemy, is void. Craft *v.* United States (1876), 12 Ct. Cl. 178. It seems, therefore, that contracts of life insurance wherein an enemy or ally of enemy is named as beneficiary are within the prohibition. The same rule would apply in regard to the insurance of enemy's property and to the insertion of the "loss if any payable to (an alien enemy)" clause in other insurance policies. The rule has been thus laid down by Lord Sumner in The Panariellos (1916), 2 Trehern P. C. 47: "Consignment of goods to an enemy port and vesting of them in an enemy while on passage, though common features in the reported cases, are not essential to the imputation of forbidden trading. Geographical destination alone is not the test. Intercourse with an enemy subject, resident in the enemy country, is forbidden even though it takes place through his agent in the United Kingdom. The development of communications, the increased complexity of commercial intercourse, and the multiplication of facilities for enemy dealings with goods though at a distance from the enemy country, are incidents in the growth of modern commerce, to which in its applications the rule of law must be adapted. They do not in themselves operate to defeat the application of an established principle."

But not every transaction ultimately benefiting an enemy is within the prohibition. "Every transaction whereby a profit may ultimately inure to an enemy is not necessarily a transaction entered into for the benefit of an enemy. If it were, no English company with a single enemy shareholder could continue to trade." Per Swinfen Eady, L. J., in Hugh Stevenson & Sons, Ltd. *v.* Aktiengesellschaft für Cartonnagen-Industrie (C. A.) [1917] 1 K. B. 842.

"Whether, as a matter of law, a resident of Australia who buys from an enemy property which is situated in Australia on the terms (as in this case) that the price is not to be paid until after the war is ended, thereby trades with the enemy is a question which may some day deserve consideration. It may, I think be fairly presumed that any sale by a vendor to a purchaser is a contract for the benefit of the vendor, but whether when the owner of the property is a person resident in an enemy country such a contract is necessarily to be regarded as trading with the enemy is a different matter." Griffith, C. J., in Donohoe *v.* Schroeder and Kubatz (High Court, 1916), 22 Com. L. R. 362.

A payment to a person within the country which merely improves the position of an alien enemy by giving him further security, is good at common law and under the English Trading with the Enemy Act, 1914, and the Proclamation of September 9, 1914. In Schmidt *v.* Vanderveen (1915), 31 T. L. R. 214, plaintiff was a resident in England and brought suit for the price of goods sold and delivered. By way of defense it was set up that the plaintiff was merely an agent for a non-resident alien enemy, and further that in view of his contract with the non-resident alien enemy, the action was for the benefit of the latter. Rowlette, J., said that the first defense was not available under the circumstances. As regards the second defense, he said: "It appears that under the arrangements between the plaintiff and the alien enemy, the plaintiff ordered goods for which he had previously obtained orders from customers in England. The goods were consigned in bulk and the plaintiff then appropriated and delivered them to the various buyers. He was at liberty to sell at any price above a certain minimum and the excess was divided equally between him and the non-resident alien enemy and the plaintiff further received three per cent commission. He was bound to pay only if and when he himself received payment. The course of business was for the plaintiff when he had collected a certain amount to send a check for it and accounts were adjusted every six months. Under the facts a payment to the plaintiff created an obligation on his part which would not have arisen without it to remit the money paid to the non-resident alien enemy, after deducting his one-half profits and commissions. In other words, he became accountable or indebted to the non-resident alien enemy for the net amounts so received. The court held that there was no objection to an action brought for the benefit of an alien enemy, provided the plaintiff was otherwise entitled to sue in his own name. The sole question was as to the payment over after the proceedings of the action. At common law he was entitled to maintain the action. The question was whether the payment of the debt sued upon would be a payment for the benefit of the firm within the meaning of the Proclamation of September 9th, 1914. In the opinion of the court no crime was committed by making a payment to a third person which merely improved the position of an enemy by giving him further security that he would ultimately recover the money and without an intention that the alien enemy should benefit by it as a payment." By consent a stay of execution was ordered until the plaintiff should have taken out and brought to a hearing a summons for the vesting of the money in the custodian; and *semble* such a vesting order would have to be made, even in the absence of a consent.

In The Liverpool Packet (1813), 1 Gall. 513, F. C. No. 8406, it was held that trading with a neutral port, although an alien enemy derives benefit from such trade, is not, unless such trade be carried on in connection with or subservient to enemy interests and policy, a trading with the enemy. In this case, the person with whom the trade was carried on was a neutral resident in a neutral country, but acting as the agent of the English government. Story, Circ. J., said that in order to found a decree of condemnation, this fact was not sufficient unless there was also present "a voluntary incorporation into the contracts and policy of the enemy." See also Walker *v.* Jeffries (1871), 45 Miss. 160.

"With knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy."

In order to constitute the offense, there must be an act of trading as well as the intention. There must be "a legal as well as a moral illegality." The Abby (1804), 5 C. Rob. 251, 1 Roscoe P. C. 464.

There must furthermore be a knowledge that the party with whom the trading is conducted is a person within the prohibited class. This is well brought out in Musson *v.* Fales (1820), 16 Mass. 332, where an action was brought after the war by British merchants for sums advanced to defendants. An American vessel went into an enemy port pretending to be a Spanish vessel, and in that character obtained credit of the plaintiffs for repairs and also for the expenses of defending her in the Admiralty Court after she was libelled as an enemy vessel. Parker, C. J., said: "It seems to be the settled law, that all trading between the subjects of nations at war, is unlawful; and that all contracts growing out of such trading, or out of any voluntary intercourse with a public enemy are void. Such trading and intercourse are considered criminal in both parties, and no action can be maintained, the basis of which is an unlawful act of the party bringing the action. But the case before us is of a different complexion. The plaintiffs must be taken to have been ignorant of the national character of the vessel they were supplying, and to have dealt upon the faith that they were trading with a neutral, in the due and regular course of business, and this even after the vessel was seized. For supposing them to believe she was *bona fide* a Spanish vessel, it was not unlawful, but on the contrary laudable for them to endeavor to procure her release. . . . In the cases which commonly occur, of trading or making contracts with the enemy, the parties are generally *in pari delicto*, and neither can maintain an action against the other. When a case arises, which shows the offence to be all on one side, it would seem not only contrary to justice, but to the very doctrine upon which the general policy is founded, to allow the criminal debtor to go free, to the loss of the innocent and ignorant creditor; for this would be to punish the innocent for the benefit of the guilty. If, in time of war, an enemy should come into this country in disguise, and, claiming to be an American citizen, should obtain property upon credit; shall he, when sued, assert his own character, and successfully resist the suit upon the ground that he had traded with the enemy? If this be the law of nations, or of war, it would seem that all moral principle was to give way before the stern and relentless genius of war. But we apprehend it is not so. There must be an analogy between the principles, which regulate contracts arising in a state of war, and those which are made in time of peace. When a man would avoid his contract, as contrary to the provisions of municipal law, it must appear that the party prosecuting was in fault, as well as himself. Thus, in the case of usury, and of gaming, both parties are equally in fault, and either may successfully resist the other, in a court of justice. But no instance can be produced from the books, where a man has been permitted to avow his own breach of law, in order to avoid his contract, where there has been a valuable consideration paid by the other party, who is entirely free from any criminal intent; unless such contract be rendered utterly void by statute. Indeed it is difficult to conceive of a case, arising under the municipal law, in which the unlawfulness, if any exist, is not mutual. But the case before us has such an aspect, one party alone being guilty. The defendants' vessel went into an enemy's port in the guise of a friend; whether forced in or not, makes no difference. The defendants' agent, pretending to be the subject of a neutral power, solicited assistance from the plaintiffs. How could these latter have committed an offence in affording it? If prosecuted by their own government, they could have defended themselves, by showing their ignorance of the fact. What would constitute a defence in such prosecution, ought to be sufficient to repel the defendants' answer to their demand. It is said, however, that, being enemies, they are incapable of contracting; that they never stood in the relation of debtor and creditor. But this is *petitio principii*. Goods sold, and services performed, are the foundation of contracts. A contract may be avoided, if unlawful. But it is not unlawful, if the party claiming be in no fault; and he cannot be in fault, if he be ignorant of the facts which constitute the unlawfulness."

The nature of the goods obtained from a neutral source may be important in determining the intent. Griffith, C. J. (dissenting on the facts), says in Moss and Phillips *v.* Donohoe (High Court, 1916) 20 Com. L. R. 580: "I think further that if a neutral carries on business in several places from some of which it is lawful to obtain goods and from other not, a negotiation with him for the purchase of goods of that kind cannot, without more be treated as indicating an intention of obtaining them from one of the places as to which it is unlawful."

Proof of receipt of notice from the President to the effect that he has reasonable cause to believe that any person is an enemy or ally of enemy is *prima facie* evidence that the person receiving such notice has reasonable cause to believe such other person to be an enemy or ally of enemy within the meaning of this section. Section 7 (b). As to the Enemy Trading Lists, issued by the War Trade Board, see *supra*, p. 85.

Clearly a "reasonable ground" cannot be said to arise by reason of knowledge that the name of the person with whom the trade is carried on appears in the Statutory ("black") Lists of Great Britain or of her Allies.

It has been held under the corresponding provisions of the French Acts that where goods are sold to a neutral (a subject of the Netherlands) and it appears that the seller was furnished by an order approved by the Netherlands Oversea Trust, the defendant must be discharged. Trib. corr. Le Havre, June 30, 1915, Gazette des Tribunaux, August 15, 1915. Good faith will be presumed. Chambre corr. Rouen, October 22, 1915, Clunet, Journal de droit int. (1915) 1099.

But the Act does not prohibit trade with a corporation existing under American law, regardless of where it carries on business, or with a corporation existing under the laws of a non-enemy or non-ally of enemy country, and not doing business within the territory of an enemy or ally of enemy even though some or all of its shareholders are enemies within the definition of the Act.

" Is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy."

Semble, this clause prohibits trade with a partnership doing business as a partnership in a non-enemy country, even though not within the definition of enemy under section 2, where one or more of the partners are within the definition of enemy, because the partnership is conducted "for, on account of, etc.," of an enemy. Van Uden *v.* Burrill [1916] S. C. 391. But this is an unwarrantable extension of the meaning of "enemy." This point is discussed more fully, *supra*, p. 60.

Transportation of enemy subjects.

(b) For any person, except with the license of the President, to transport or attempt to transport into or from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy or ally of enemy nation, with knowledge or reasonable cause to believe that the person transported or attempted to be transported is such subject or citizen.

" Transport."

Transportation means to convey, to carry; the means are immaterial. See United States *v.* Sheldon (1817), 2 Wheat. 119, 4 L. ed. 199.

The prohibition against transportation "into or from the United States" applies to all persons and includes not alone American vessels but also foreign vessels, international railway communications, and any other means of transportation. Vessels of American registry are prohibited from transporting enemy or ally of enemy subjects "from any place to any other place." The prohibition, therefore, includes the transportation on an American vessel between two foreign ports or between two American ports.

" Any subject or citizen of an enemy or ally of enemy nation."

It is to be noted that the prohibition is against the transportation of subjects of hostile nations not against "enemies" as defined in section 2 of the Act. A vessel of American registry may, therefore, not transport any enemy subject even though resident in the United States from one place within the United States to any other place within the United States. There is no prohibition against transportation of the subjects of enemy or ally of enemy states within the United States by means other than vessels of American registry. Until the President by Proclamation, extends the meaning of the term "enemy" as used in section 2 of the Act to alien enemies residing within the United States, there is no limitation on the transportation of such persons within the United States by means other than vessels of American registry. If the meaning of the term "enemy" is extended to cover alien enemies within the United States, the prohibition against the transportation of such persons within the United States would arise not under this subsection of section 3, but under subsection (a), that is, under the prohibition to enter into a contract of transportation with such persons.

Transmission of communications.

(c) For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of an enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder by the President or by such person as he may direct), to send, or take out of, or bring into, or to attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail; and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: *Provided, however*, That any person may send, take, or transmit out of the United States anything herein forbidden if he shall first submit the same to the President, or to such officer as the President may direct, and shall obtain the license or consent of the President, under such rules and regulations, and with such exemptions, as shall be prescribed by the President.

" For any person . . . to send . . . except in the regular course of the mail."

The primary object of this provision is to prevent the sending of any communications out of the United States or bringing into the United States any communications except in the regular course of the mail. The law *pro tanto* repeals U. S. Penal Code, sections 185, 186, which permitted the sending or receipt of communications by private messages. It does not apply to any person in the service of the United States Government even though such person be not regularly employed by the Government in the capacity of courier. It furthermore excludes the couriers of foreign governments, except enemy or ally of enemy countries. The prohibition extends to "any letter or other writing or tangible form of communication." These words must be compared with the similar words used in a subsequent part of this subsection, "any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication." There is no prohibition against the sending out of or bringing into the United States "any book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message," unless the same be intended as a "communication." It is immaterial whether the communication be of a commercial or of a non-commercial character, provided it be in "tangible form." It, therefore, does not extend to verbal messages.

" It shall be unlawful . . . to an enemy or ally of enemy."

This provision is an extension of Title 1, section 2 of the Espionage Act of June 15, 1917, which provides: "Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided, That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years."

The provisions of the Espionage Act relate to communications regarding the national defense; the provisions of the Trading with the Enemy Act are directed against all forms of communication whether relating to the national defense or whether they are of a commercial or purely personal character, if there be an intent that the same are to be delivered directly or indirectly to an enemy or ally of enemy. While the Espionage Act prohibits communications relating to the national defense being made to any foreign government or any representative or subject of such government, whether enemy or not, and regardless of the residence of the person to whom the communication is made, this provision of the Trading with the Enemy Act is limited to persons who are enemies or allies of enemies within the definition in section 2.

In extending the prohibition of communications to those of a non-commercial character, the Act of Congress goes beyond what has become the generally accepted rule and practice, and also goes beyond the present practice of Great Britain, France and other countries, none of which prohibits the sending of communications of a non-commercial character to enemy countries. There are, it is true, expressions in some of the earlier text-writers and dicta in some cases to the effect that the doctrine of non-intercourse applies to all forms of communications. Thus, Kent in his Commentaries, Vol. 1, 66, says: "The idea that any commercial intercourse or pacific dealing can lawfully subsist between the people of the powers at war, except under the clear and express sanction of the government, and without a special license, is utterly inconsistent with the new class of duties growing out of a state of war. The interdiction flows necessarily from the principle already stated, that a state of war puts all the members of the two nations respectively in hostility to each other; and to suffer individuals to carry on a friendly or commercial intercourse, while the two governments were at war, would be placing the act of government and the acts of individuals in contradiction to each other. It would counteract the operations of war, and throw obstacles in the way of the public efforts, and lead to disorder, imbecility, and treason. . . . It is a well settled doctrine in the English courts, and with the English jurists, that there cannot exist, at the same time, a war for arms and a peace for commerce. The war puts an end at once to all dealing and all communication with each other, and places every individual of the respective governments as well as the governments themselves, in a state of hostility. This is equally the doctrine of all the authoritative writers on the law of nations, and of the maritime ordinances of all the great powers of Europe. It is equally the received law of this country, and was so decided frequently by the Congress of the United States during the Revolutionary War, and again by the Supreme Court of the United States during the course of the last war; and it is difficult to conceive of a point of doctrine more deeply or extensively rooted in the general maritime law of Europe, and in the universal and immemorial usage of the whole community of the civilized world."

Regarding these statements, Livingston, J., in United States *v.* Barker (1820), 1 Paine, 156, F. C. No. 14,159, says: "Bynkershoek and other writers on national law, have been referred to as establishing the doctrine, that every species of intercourse or communication, whether direct or indirect, whether commercial or of any other character, whether personal or by letter, is strictly inhibited between subjects of belligerent nations, unless under the immediate license of their respective governments; and much has been said to show the extreme danger of permitting, during such a state of things, any kind of correspondence which is not sanctioned by necessity, or cannot be excused on the plea of humanity. As it regards Bynkershoek, it is manifest, that when laying down the rule on this subject, he confines it, however general his language may be in other respects, or whatever his reasoning may be upon it, to an intercourse strictly commercial. 'From the very nature of war,' says he, 'it cannot be doubted, that commerce between enemies must cease.' This is also the meaning of other elementary writers; and it is a proposition which no court can have any disposition to quarrel with. Such a state of things must necessarily ensue upon every declaration of war. But if the dicta or reasoning of some writers, who suppose they have done nothing more than to follow the authors just referred to, are to be my guides on this occasion, it would be impossible to make any kind of communication, or have any intercourse or dealing with an enemy, however innocent in its nature, or however free from danger to the state, an exception to the very broad rule which they have been pleased to prescribe. . . . I do not, therefore, subscribe to the doctrine; and never shall, until the legislature or the Supreme Court of the United States shall make it my duty to do so—that no kind of intercourse whatever, between enemies, is permitted."

Gray J., in Kershaw *v.* Kelsey (1868), 100 Mass. 561, 97 Am. Dec. 124, after a review of the English and American authorities, says: "These expressions would seem to have been intentionally, as they are necessarily in judicial effect, limited to the case before the court, of actual passage of persons or transmission of property between the territories of the belligerents. In Scholefield *v.* Eichelberger, 7 Pet. 586, in which a contract made with an enemy during war for the purchase of goods was held void, the same learned judge, after asserting in the broadest terms, and outside of the question at issue, that 'the doctrine is not at this day to be questioned that, during a state of hostility, the citizens of the hostile states are incapable of contracting with each other,' took the precaution of adding, 'To say that the rule is without exception would be assuming too great a latitude.' . . . The only authorities, English or American, cited by Mr. Justice Story or Chancellor Kent, which afford any color for extending the doctrine beyond trading directly or indirectly with the enemy, or insurances upon or licenses for such trade, are one ancient order in the Black Book of the Admiralty, two cases in the Year Books, and a dictum in the court of chancery. . . . The continental writers, cited by Chancellor Kent, fall far short of supporting his assertion that they 'unitedly prove that all private communication and commerce with an enemy in time of war are unlawful.'"

Bentwich, War and Private Property, 51, says that while in theory the prohibition of commerce extends to postal or telegraphic correspondence, it may be presumed that personal correspondence would not be severely restricted unless of a military nature.

During the Spanish-American War, even the transmission of scientific papers and journals through the Smithsonian Institution to Spain and her colonies was permitted. Mr. Adee, Acting Secretary of State in a communication to the Secretary of the Smithsonian Institution, writes: "It has always been the aim of this Government, since the days of Franklin, to promote the increase and diffusion of scientific knowledge, and likewise the aim to shield peaceful pursuits and the progress of art and science as far as possible from the evil effects of war. In obedience to this policy and in the absence of special reasons to the contrary, I can perceive no cause for changing the conduct of the Smithsonian Institution in regard to sending scientific papers and journals abroad and even to Spain and her colonies. Owing, however, to the present state of hostilities it would of course be prudent that some care be taken as to the nature of the published material which is sent to Spain and her colonies at present, and, that knowledge and information relative to new scientific discoveries, or advances in military and naval warfare and kindred subjects, should not be furnished." 7 Moore, International Law Digest, section 1135.

The present English view is thus stated by Richard King in 59 Sol. Jour. 268, 528: "At the present day, when international commercial intercourse and social relations are so extended, it would appear impossible and even unthinkable that this strict rule should be enforced, and that all communications should be prohibited, and, in fact, in numerous recent decisions, the right to communicate has been recognized. This necessarily follows from the decisions deciding that an alien enemy can appear in the English courts and be represented by solicitor and counsel, as also by the decision of the President of the Prize Court, allowing alien enemies to appear under certain circumstances. And the recent emergency legislation appears to me to carry the matter still further, as the right to communicate is obviously recognized. . . . In the Defence of the Realm Consolidation Regulations, 1914, article 24 is as follows:—'No person shall, without lawful authority, transmit otherwise than through the post . . . any letter or written message from or originating with or to or intended for (a) any person or body of persons of whatever nationality resident or carrying on business in any country for the time being at war with His Majesty . . . or (b) any person or body of persons whose sovereign or state is at war with His Majesty and who resides or carries on business in the United Kingdom.' These provisions would seem clearly to recognize the legality of communication by post." See now Defense of the Realm Cons. Regs. 24 B.

As a matter of fact there is no limitation under the present English practice of any communications of a purely personal character, and the English postal authorities have in fact framed rules regarding the manner in which such communications can be sent through the intermediary of persons in neutral countries. It is to be noted that the Act of Congress does not include such communications under the definition of "trading" but makes their transmission a distinct offense. The Act prohibits the sending, not the receiving of communications.

Censorship of communications.

(d) Whenever, during the present war, the President shall deem that the public safety demands it, he may cause to be censored under such rules and regulations as he may from time to time establish, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country.

Any person who willfully evades or attempts to evade the submission of any such communication to such censorship or willfully uses or attempts to use any code or other device for the purpose of concealing from such censorship the intended meaning of such communication shall be punished as provided in section sixteen of this Act.

" Which may be carried by any vessel or other means of transportation touching . . . the United States and bound to or from any foreign country."

The means of transportation are immaterial, provided the communication is bound to or from a foreign country. The censorship, therefore, extends to communications passing through the United States from one foreign country to another foreign country. The vessel must "touch" an American port. There is no provision permitting censorship of domestic communications. *Quære*, whether the right would extend to ordinary postal communications on a vessel not bound for but sent into an American port for examination by the naval authorities. As to censorship over international correspondence, see 7 Moore, International Law Digest, section 1142; also the diplomatic correspondence of the United States during the present war.

Local branches and agencies of enemy firms. Conditions of licenses.

Sec. 4. (a) Every enemy or ally of enemy insurance or reinsurance company, and every enemy or ally of enemy, doing business within the United States through an agency or branch office, or otherwise, may, within thirty days after the passage of this Act, apply to the President for a license to continue to do business; and, within thirty days after such application, the President may enter an order either granting or refusing to grant such license. The license, if granted, may be temporary or otherwise, and for such period of time, and may contain such provisions and conditions regulating the business, agencies, managers and trustees and the control and disposition of the funds of the company, or of such enemy or ally of enemy, as the President shall deem necessary for the safety of the United States; and any license granted hereunder may be revoked or regranted or renewed in such manner and at such times as the President shall determine: *Provided, however*, That reasonable notice of his intent to refuse to grant a license or to revoke a license granted to any reinsurance company shall be given by him to all insurance companies incorporated within the United States and known to the President to be doing business with such reinsurance company.

" Every enemy or ally of enemy insurance or reinsurance company, etc."

The subsection applies only to enemy or ally of enemy persons "doing business" within the United States through an "agency or branch office, or otherwise." For definition of "enemy" and "ally of enemy" see section 2. It is to be noted that under this definition persons domiciled in, and corporations organized under the laws of neutral and even belligerent states at war with the Central Powers doing business in hostile territory may come within the operation of this section.

The words "or otherwise" mean, under the *ejusdem generis* rule, doing business by means similar to those of an agency or branch office. There must be a "doing business" and this is used in the sense of the rules regarding foreign corporations; a mere personal agency is not enough.

The President may prohibit any foreign (including non-enemy) insurance company from doing business within the United States. Section 4 (b).

The question arises as to the status of branches or agencies of enemy firms that were doing business within the United States at the outbreak of the war. It is to be noted that the proclamations of the President apply only to agencies and branches of German insurance companies. Foreign corporations licensed to do business within a State acquire a special local character analogous to the privileged traders of the common law. The same rule applies to agencies or branches of enemy concerns not in the nature of a corporation. The question has come up before the English courts during the present war. In Ingle *v.* Mannheim Insurance Co. [1915] 1 K. B. 227, in a case affecting the English branch of a German insurance company, it was held that except in so far as the Proclamation of October 8, 1914, altered the situation, this branch was not an alien enemy in respect of its English business. The court said (per Bailhache, J.,): " In the case of individuals and at common law the question whether a man is to be treated as an alien enemy for the purpose of his contracts, rights of suit, and the like, does not depend upon his nationality or even upon his true domicile, but upon whether he carries on business in this country or not. If he does, it is not illegal, even during war, to have business dealings with him in respect of the business which he carries on here. He is not in respect of that business divided by the war line, but has what is sometimes called a commercial domicile here. The same thing is true of companies, whose head-office is in Germany, but which have a branch office here, in respect of business transactions with such branch office. The matter is discussed by Lord Lindley in Janson *v.* Driefontein Consolidated Mines [1902] A. C. at pp. 505, 506, and in the cases cited by him. In my judgment the defendant company did, upon the facts stated, so far carry on business through their underwriters here, as to prevent the application of the rules applicable to alien enemies from applying to business transacted with those underwriters, as this business in fact was."

In a "Memorandum concerning Aliens" issued by the British Treasury in August, 1914, appears the following clause: "If a firm with headquarters in hostile territory has a branch in neutral or British territory, trade with the branch is (apart from prohibitions in special cases) permissible, as long as the trade is *bona fide* with the branch, and no transaction with the head office is involved." And the English Trading with the Enemy Proclamation of September 9, 1914, expressly legalizes transactions with branches of enemy firms locally situated in British territory.

This doctrine applies with special force to foreign insurance corporations which are placed under special supervision in various States and which are required to deposit funds with trustees for the general benefit and security of policy holders and creditors in the United States or of a particular State. Regarding the status of a British corporation, admitted to do business in New York, it was said in Martine *v.* International Life Insurance Co. (1873), 53 N. Y. 339, per Church, C. J.: "It is true that the residence of a corporation is in the State of its creation, and it is well established that such residence cannot be changed, and if it was a question of domicile merely, the point would be too clear for argument. . . . The defendant sought and obtained the privilege of establishing and carrying on its business here under the regulations fixed by the statutes of this State. It established a permanent general agency, and conducted its business here as a distinct organization, and was permitted by law to do this in the same manner as domestic institutions. The business thus established and carried on in New York was designed to be confined to the United States, and necessarily partook of the national character as a privileged business. Chancellor Kent, in his Commentaries, says: 'The position is a clear one, that if a person goes into a foreign country and engages in trade there, he is by the law of nations to be considered a merchant of that country, and a subject for all civil purposes, whether that country be hostile or neutral.' (1 Kent Com., 84.) Nor is it invariably necessary that the residence be personal. While the general rule is that a principal transacting business in the ordinary way, through an agent, will not contract the character of a domiciled person, yet if the principal be trading not on the ordinary footing of a foreign trader, but as a privileged trader, such a privileged trade puts him on the same ground with their own subjects, and he would be considered as sufficiently invested with the national character by the residence of his agent. (Id.)" The Chief Justice was of opinion that such branch would retain its American character even in the event of a war between the United States and the country of its incorporation. "It was essentially an independent American business, and would be treated as such, I have no doubt, if war existed between this country and England."

The whole question was reëxamined in Morgan *v.* Mutual Benefit Life Insurance Company (1907), 189 N. Y. 447, where it was said per Chase, J.: "The presence of the insurance company in this State is not temporary, but continuous. It is legally and actually here, not only because process has been served upon it and it has appeared in the action, but it is here pursuant to the provisions of our statutes by authority of which it is doing business and maintaining offices in this State. The contract of insurance was made by it with a resident of this State through its agents so located and doing business here. Every transaction relating to the contract, its assignment and the payment of premiums thereon has occurred here. The policy of insurance and the claim against the insurance company for the amount payable on the policy of insurance are in the control of our court and any judgment that may be rendered in the action can be enforced and made effectual in this State. As to such a claim the insurance company should be treated as a domestic insurance company and as domiciled in this State." See also Statham *v.* New York Life Insurance Co. (1871), 45 Miss. 581, 7 Am. Rep. 737; New England Mutual Life Insurance Company *v.* Woodworth (1883), 111 U. S. 138, 28 L. ed. 379; Sulz *v.* Mutual R. F. L. Association (1895), 145 N. Y. 563; Matter of Gordon (1906), 186 N. Y. 471; Matter of Wilcox (1908), 123 App. Div. (N. Y.) 86.

On this question Professor John Bassett Moore says: "It is evident that the branch establishments now in question have an American character far more precise and more permanent than that which is derived from an ordinary commercial domicil; that their local character and control are more definite and more substantial than that of the often shadowy 'legal entity' which results, in the case or a foreign corporation, from registration under the English Companies Act; and that they are to all intents and purposes domestic concerns. This results from the legal requirements under which they are formed, supervised, and conducted, including the deposit of funds with trustees (citizens of the United States, approved by the Superintendent of Insurance) for the general benefit and security of policy holders and creditors in the United States, and the additional deposit with State authorities of prescribed funds also for the benefit of policy holders and (or) creditors in the particular State or in the United States, which funds cannot be released until all liabilities have been discharged." Opinion by Mr. John Bassett Moore on the Legal Position of the United States Branches of Foreign Insurance Companies, March 22, 1917. (Privately printed.)

As regards the German insurance companies doing business in the

United States the President on April 6, 1917, issued a Proclamation as follows:

"Whereas, certain insurance companies incorporated under the laws of the German Empire, have been admitted to transact the business of insurance in various States of the United States by means of separate United States branches, established pursuant to the laws of such States, and are now engaged in business under the supervision of the insurance departments thereof, with assets in the United States deposited with insurance departments, or in the hands of resident trustees, citizens of the United States, for the protection of all policyholders within the United States, and,

"Whereas, the interests of the citizens of the United States in the protection afforded by such insurance are of great magnitude, so that it is deemed to be important that the agencies of such companies in the United States be permitted to continue in business.

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers vested in me as such, hereby declare and proclaim that such branch establishments of German insurance companies, now engaged in the transaction of business in the United States pursuant to the laws of the several States, are hereby authorized and permitted to continue the transaction of their business in accordance with the laws of such State in the same manner and to the same extent as though a state of war did not now exist;

"Provided, however, that all funds of such establishments, now in the possession of their managers or agents, or which shall hereafter come into their possession, shall be subject to such rules and regulations concerning the payment and disposition thereof as shall be prescribed by the insurance supervising officials of the State in which the principal office of such establishment in the United States is located, but in no event shall any funds belonging to or held for the benefit of such companies be transmitted outside of the United States nor be used as the basis for the establishment, directly or indirectly, of any credit within or outside of the United States, to or for the benefit or use of the enemy or any of his allies without the permission of this Government."

This was subsequently modified by the Proclamation of July 13, 1917, the material portion of which is as follows: "Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers vested in me as such, hereby declare and proclaim that such branch establishments of German insurance companies now engaged in the transaction of business in the United States pursuant to the laws of the several States are hereby prohibited from continuing the transaction of the business of marine and war-risk insurance either as direct insurers or reinsurers; and all individuals, firms, and insurance companies incorporated under the laws of any of the States or Territories of the United States, or of any foreign country, and established pursuant to the laws of such States and now engaged in the United States in the business of marine and war-risk insurance either as direct insurers or reinsurers are hereby prohibited from reinsuring with companies incorporated under the laws of the German Empire, no matter where located; and all persons in the United States are prohibited from insuring against marine or war risks with insurance companies incorporated under the laws of the German Empire or with individuals, firms, and insurance companies incorporated under the laws of any of the States or Territories of the United States or of any foreign country and now engaged in the business of marine or war-risk insurance in the United States, which reinsure business originating in the United States with companies incorporated under the laws of the German Empire, no matter where located."

Finally, by a decision of the Secretary of the Treasury, rendered November 26, 1917, all enemy and ally of enemy marine, fire and casualty insurance and reinsurance companies were prohibited from continuing to do business within the United States. The text of the decision is as follows:

"By virtue of the authority vested in me by the President under the Trading with the Enemy Act to grant or withhold licenses to enemy or ally of enemy insurance companies, a hearing was called of the various parties interested, including the State superintendents of insurance. The hearing was largely attended, and, after full discussion, briefs were filed. Upon careful weighing of the evidence submitted, I have reached the conclusion that the safety of the United States requires that enemy and ally of enemy marine, fire and casualty insurance companies shall not be allowed to do business as going concerns. The consideration of safety is so important as to render it unnecessary to determine at this time whether this action is also demanded by other considerations incident to the successful prosecution of the war. In these circumstances I am convinced that the best interests of the country will be served by the liquidation of these companies under certain direction of their American management and subject to such regulations as the Secretary of the Treasury may from time to time prescribe. As the liquidation of the life insurance companies involved may work an injustice to policy holders and as the information accessible to such companies cannot benefit the enemy because of the character of the business and its inconsiderable proportions, these companies for the present will be allowed to continue existing contracts."

Abrogation of insurance contracts.

Provided further, That no insurance company, organized within the United States, shall be obligated to continue any existing contract, entered into prior to the beginning of the war, with any enemy or ally of enemy insurance or reinsurance company, but any such company may abrogate and cancel any such contract by serving thirty days' notice in writing upon the President of its election to abrogate such contract.

For abrogation of other forms of contracts with enemies or allies of enemies, see section 8 (b).

" No insurance company, etc."

The purpose of the proviso was to enable American insurance companies having contracts or treaties of re-insurance with enemy or ally of enemy insurance companies to cancel such contracts by notice.

The right of abrogation is limited to insurance companies organized within the United States. It does not exist in favor of any person other than such insurance companies. An individual holding a policy of insurance in an enemy or ally of enemy company has no right of abrogation, under this or any other provision of the Act. A foreign insurance company admitted to do business in the United States has no right to abrogate.

" Any existing contract, entered into prior to the beginning of the war."

The contract must have been entered into prior to midnight of April 6, 1917. Contracts entered into after the actual declaration of a state of war with the German Empire with persons who, at common law became alien enemies by virtue of this declaration are void. See *supra*, p. 109. But contracts entered into after the declaration of war and prior to the passage of the Act with persons who became enemies or allies of enemy under section 2 of the Act, cannot be abrogated under this paragraph. See *infra*, notes to section 8 (b).

" With any enemy or ally of enemy insurance company."

For definition of "enemy" and "ally of enemy" see section 2. "Any" company not necessarily a company doing business within the United States.

" Upon the President."

Not as in the case of other contracts under section 8 (b), upon the Alien Property Custodian.

Continuation of business by insurance companies.

For a period of thirty days after the passage of this Act and further pending the entry of such order by the President, after application made by any enemy or ally of enemy insurance or reinsurance company, within such thirty days as above provided, the provisions of the President's proclamation of April sixth, nineteen hundred and seventeen, relative to agencies in the United States of certain insurance companies, as modified by the provisions of the President's proclamation of July thirteenth, nineteen hundred and seventeen, relative to marine and war-risk insurance, shall remain in full force and effect so far as it applies to such German insurance companies, and the conditions of said proclamation of April sixth, nineteen hundred and seventeen, as modified by said proclamation of July thirteenth, nineteen hundred and seventeen, shall also during said period of thirty days after the passage of this Act, and pending the order of the President as herein provided, apply to any enemy or ally of enemy insurance or reinsurance company, anything in this Act to the contrary notwithstanding. It shall be unlawful for any enemy or ally of enemy insurance or reinsurance company, to whom license is granted, to transmit out of the United States any funds belonging to or held for the benefit of such company or to use any such funds as the basis for the establishment directly or indirectly of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

" For a period of thirty days, etc."

The business of German insurance companies was regulated by the President's Proclamations of April 6, 1917, and July 13, 1917, until the passage of the Act. For provisions of these Proclamations, see *supra*, p. 159. The business of Austro-Hungarian, Bulgarian and Turkish companies remained unaffected.

From October 6, 1917, and until November 5, 1917, the business of all enemy and ally of enemy (see section 2) insurance companies became subject to the provisions of these Proclamations, and this status continued until the decision of the Secretary of the Treasury of November 26, 1917, as to all insurance companies. For text, see *supra*, p. 160. All enemy and ally of enemy marine, fire and casualty companies were forbidden to do new business. Life insurance companies may continue to do business under the terms of the Proclamations, but subject to the proviso as to transmission or use of funds.

Continuation of business other than insurance.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made within such thirty days by any enemy or ally of enemy, other than an insurance or reinsurance company as above provided, it shall be lawful for such enemy or ally of enemy to continue to do business in this country and for any person to trade with, to, from, for, on account of, on behalf of, or for the benefit of such enemy or ally of enemy, anything in this Act to the contrary notwithstanding: *Provided, however,* That the provisions of sections three and sixteen hereof shall apply to any act or attempted act of transmission or transfer of money or other property out of the United States and to the use or attempted use of such money or property as the basis for the establishment of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

" For a period of thirty days, etc."

Enemy or ally of enemy persons, other than insurance companies, were allowed to continue to do business for the period ending November 5, 1917, and if an application for license was made within this period, to continue to do business pending the entry of an order by the President.

Such an order must be made within thirty days after the filing of the application. All of these pending applications must have been disposed of before December 5, 1917.

As to actions at law by licensed branches or agencies, see section 7 (b), *infra*, p. 219.

The effect of a license (in the terms of the licenses given to the foreign branches of German banks) of a branch of an enemy business deprives judgment creditors of their right to seize the assets of the branch in satisfaction of a judgment debt which would not ordinarily have been discharged by that branch. Leader, Plunkett & Leader *v.* Diskouto Gesellschaft [1915] 2 K. B. 154, modifying s. c. (1914), 31 T. L. R. 83; and cp. Cooper & Co. *v.* Deutsche Bank (1914), Glasgow Herald, November 21, 1914, Trotter, 451.

Unlawful to continue business without license.

If no license is applied for within thirty days after the passage of this Act, or if a license shall be refused to any enemy or ally of enemy, whether insurance or reinsurance company, or other person, making application, or if any license granted shall be revoked by the President, the provisions of sections three and sixteen hereof shall forthwith apply to all trade or to any attempt to trade with, to, from, for, by, on account of, or on behalf of, or for the benefit of such company or other person: *Provided, however*, That after such refusal or revocation, anything in this Act to the contrary notwithstanding, it shall be lawful for a policy-holder or for an insurance company, not an enemy or ally of enemy, holding insurance or having effected reinsurance in or with such enemy or ally of enemy insurance or reinsurance company, to receive payment of, and for such enemy or ally of enemy insurance or reinsurance company to pay any premium, return premium, claim, money, security, or other property due or which may become due on or in respect to such insurance or reinsurance in force at the date of such refusal or revocation of license; and nothing in this Act shall vitiate or nullify then existing policies or contracts of insurance or reinsurance, or the conditions thereof; and any such policy-holder or insurance company, not an enemy or ally of enemy, having any claim to or upon money or other property of the enemy or ally of enemy insurance or reinsurance company in the custody or control of the Alien Property Custodian, hereinafter provided for, or of the Treasurer of the United States, may make application for the payment thereof and may institute suit as provided in section nine hereof.

" If no license is applied for."

A failure to apply for license or a refusal to grant same, imposes an absolute prohibition on the enemy company or other person of doing business here. It does not prevent such enemy or any other person from receiving a license under section 3 or other sections of the Act. Certain acts, enumerated in the proviso, may be done. As to suits against such enemy persons see section 9, and notes thereto.

" If a license shall be refused."

From the moment of such refusal all of the provisions of the Act relating to trading and communications become operative. Strictly speaking even purely ministerial acts for the preservation of the property cannot be performed, except under license.

Change of name by individuals or partnerships.

(b) That, during the present war, no enemy, or ally of enemy, and no partnership of which he is a member or was a member at the beginning of the war, shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the President.

" No enemy or ally of enemy . . . shall assume any name, etc."

This applies only to persons who are "enemies" or "allies of enemy" under section 2. It does not include an individual, even of enemy nationality, resident within the United States, unless the President extends the meaning of the term "enemy" under the powers conferred by section 2.

The provision of the Act covers the case of a change of a partnership name where a partner of any nationality (even American) is resident within enemy or ally of enemy territory, or is an "enemy" by reason of other circumstances. If such partner, regardless of nationality, is resident in enemy territory (but not if resident in territory of a country with which the United States is not at war, even though it be an ally of such enemy country) the prevailing opinion is that the partnership is dissolved by the outbreak of war. For a consideration of this topic, see *infra*, p. 278. If we adopt this view, there can, therefore, be no question as to a partnership of which he is a member, and the partnership of which he was a member ceased to exist when he ceased to be a member of the firm by operation of law. Any new partnership thereafter formed may assume a new firm name.

If the partnership agreement expressly provides for a continuance in spite of the fact that one of the partners becomes an alien enemy [cp. Armitage *v.* Borgmann (1915), 59 Sol. Jour. 219], the name cannot be changed without a license. *Quære*, whether the same rule applies where the business and good will are acquired by the remaining partners.

" Under license."

The competent authority to grant licenses under this section is the War Trade Board. Executive Order, October 12, 1917, section 6.

The President may suspend the operations of the Act so far as they apply to an ally of enemy. Section 5 (a). But while he may grant licenses to allies of enemy under sections 3, 4 (a) and 10 (b), his power to license under section 4 (b) is given only under this section. But such license may be given generally to all persons affected thereby or specially to designated classes or individuals.

Power to prohibit foreign insurance companies from doing business.

Whenever, during the present war, in the opinion of the President the public safety or public interest requires, the President may prohibit any or all foreign insurance companies from doing business in the United States, or the President may license such company or companies to do business upon such terms as he may deem proper.

" Any or all foreign insurance companies."

For provisions regarding enemy and ally of enemy insurance companies see section 4 (a).

There is no power at common law or under the Act to abrogate contracts with foreign insurance companies as distinguished from enemy insurance companies. The power to prohibit extends only to foreign insurance companies not to companies doing other kinds of business in the United States, nor does it extend to foreign partnerships or individuals carrying on an insurance business within this country.

No action has been taken under this provision up to January 15, 1918.

Suspension of provisions applicable to an ally of enemy. Licenses.

Sec. 5. (a) That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof, and to perform any act made unlawful without such license in section three hereof, and to file and prosecute applications under subsection (b) of section ten hereof; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act; and the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct.

See also sections 3, 4, 7, and 10.

"President . . . may . . . suspend the provisions of this Act, etc."

Up to January 15, 1918, no such suspension has taken place.

" President may grant licenses."

"A state of war may exist and yet commercial intercourse be lawful. They are not necessarily inconsistent with each other. Trading with a public enemy may be authorized by a sovereign, and even to a limited extent by a military commander. Such permissions or licenses are partial suspensions of the laws of war, but not of the war itself. In modern times they are very common. Bynkershoek, in his Quaest. Jur. Pub., lib. 1 c. 3, while asserting as a universal principle of law that an immediate consequence of the commencement of war is the interdiction of all commercial intercourse between the subjects of the states at war, remarks—'The utility, however, of merchants, and the mutual wants of nations, have almost got the better of the laws of war as to commerce. Hence it is alternatively permitted and forbidden in time of war, as princes think it most for the interests of their subjects. A commercial nation is anxious to trade, and accommodates the laws of war to the greater or lesser want that it may be in of the goods of others. Thus sometimes a mutual commerce is permitted generally; sometimes as to certain merchandise only, while others are prohibited; and sometimes it is prohibited altogether.'" Matthews *v.* M'Stea (1875), 91 U. S. 7, 23 L. ed. 188.

Halleck, Treatise on the Laws of War, pp. 676 *et seq.*, discusses this subject at considerable length, and remarks "That branch of the government to which, from the form of its constitution, the power of declaring or making war is entrusted, has an undoubted right to regulate and modify, in its discretion, the hostilities which it sanctions."

At common law the Crown has power to license trade with the enemy, and such licenses may be given to a British subject, a neutral or an enemy. The Hoop (1799), 1 C. Rob. 196, 1 Roscoe P. C. 104; Vandyck *v.* Whitmore (1801), 1 East, 475; Usparicha *v.* Noble (1811), 13 East, 332. Within the limits of his particular command, a military or naval officer may grant a special license. The Hope (1813), 1 Dod. 226. In the United States, as a general rule, licenses are issued under the authority of an act of Congress; but in special cases and for purposes immediately connected with the prosecution of the war, they may be granted by the authority of the President, as commander-in-chief of the military and naval forces of the United States. Matthews *v.* M'Stea (1875), 91 U. S. 7, 23 L. ed. 188. The proclamations of the President relating to German insurance companies (*supra*, p. 159) were not authorized by an act of Congress.

Under the Act, only the President and such officers as may be vested with authority by the President have the power to grant licenses. The military and naval authorities have no such power. The Reform (1864), 3 Wall. 617, 18 L. ed. 105; The Sea Lion (1866), 5 Wall. 630, 18 L. ed. 618;

The Ouachita Cotton (1867), 6 Wall. 521, 18 L. ed. 935. Nor is a diplomatic or consular officer of the United States as such vested with power to grant a license. "The claimant asserted, and the consul denied, that protection to the voyage was extended by the latter. But we do not go at length into this matter because we think that no engagement with the United States nor any particular service to the United States was made out in that connection, and, so far as appears, the vessel was captured in the ordinary course of cruising duty at a time and under circumstances when her liability was not to be denied. Moreover, a United States consul has no authority by virtue of his official station, to grant any license or permit the exemption of a vessel of an enemy from capture and confiscation. This was so held by Judge McCaleb in Rogers *v.* The Amado, Newberry, Adm. 400, in which he quotes the language of Sir William Scott in The Hope, 1 Dod. Adm. 226, 229: 'To exempt the property of enemies from the effect of hostilities, is a very high act of sovereign authority; if at any time delegated to persons in a subordinate situation, it must be exercised either by those who have a special commission granted to them for the particular business, and who, in legal language, are termed mandatories, or by persons in whom such a power is vested in virtue of any official situation to which it may be considered incidental. It is quite clear that no consul in any country, particularly in an enemy's country, is vested with any such power in virtue of his station. "*Ei rei non præponitur;*" and therefore his acts relating to it are not binding.' In The Joseph, 8 Cranch, 451, the vessel was condemned for trading with the enemy, and it was held that she was not excused by the necessity of obtaining funds to pay the expenses of the ship, nor by the opinion of an American minister expressed to the master, that by undertaking the voyage he would violate no law of the United States. The court said that these considerations, 'if founded in truth, present a case of peculiar hardship, yet they afford no legal excuse which it is competent to this court to admit as the basis of its decision.'" Per Fuller, C. J., in The Benito Estenger (1899), 176 U. S. 568, 44 L. ed. 592. But a license by an officer *de facto* entrusted with the power to grant licenses is sufficient. Donohoe *v.* Schroder and Kubatz (High Court, 1916), 22 Com. L. R. 362. The War Trade Board is vested with the powers under this section.

During the present war a general license has been given to all persons residing or carrying on business in the British Dominions to pay fees relating to patents, designs, or trade-marks, in an enemy country and to pay on behalf of an enemy, fees for these purposes, in Great Britain. London Gazette, November 6, 1914. Furthermore, British owners of cargoes on board an enemy's ship in a neutral port, are allowed to pay freight and other necessary charges to the enemy agent at such port in order to obtain possession of the cargo. London Gazette, September 29, 1914. Special licenses were granted to the German and Austro-Hungarian banks operating in England. Cp. Direktion der Diskonto-Gesellschaft *v.* A. H. Brandt & Co. (1915), 31 T. L. R. 586; see also Armitage *v.* Borgmann (1915), 59 Sol. Jour. 219.

The British government has also shown great liberality in the granting of special licenses to solicitors to permit the necessary communications with persons in enemy countries, both for the purpose of the representation of British interests in enemy countries and the representation of enemy interests in Great Britain.

Licenses have also uniformly been granted to permit the transmission of funds for the payment of taxes due by residents of Great Britain in respect of property situated in enemy countries, the payment of interest on mortgages, premiums on insurance, deposits for court costs, attorneys' fees, the payment of the principal of mortgages, in order to prevent foreclosure, and many cases of a similar character. Permission has also been granted to transmit small sums payable by way of annuity.

During the Spanish-American War, licenses were granted to enable the licensee to protect interests in Spain. So, e. g., upon the request of the Equitable Life Assurance Society of the United States, for an authorization to apply to the Spanish government for a license to protect its assets in Spain, Mr. Moore, Assistant Secretary of State, after referring to the failure of Spain to comply with the provisions of article 12 of the treaty of October 22, 1795, says: "It (the government of the United States) is not disposed in such a case as is now presented, to stand in the way of citizens obtaining, by special license of the Spanish Government, the protection which the treaty was designed to secure to them. The Department therefore grants the request of the Equitable Life Assurance Society of the United States for permission to obtain from the Spanish Government a license which will enable the company to protect its assets in Spain. It is, however, to be understood that this permission is granted upon the condition that the company will perform its duties as a citizen of the United States, and confine itself in its action in Spain to the protection of its legitimate interests, and that the permission is revocable at the will of this government." 7 Moore International Law Digest, section 1141.

A license is not transferable. Feize *v.* Thompson (1808), 1 Taunt. 121; Snell *v.* Dwight (1876), 120 Mass. 9. The burden of proving a license is on the licensee. Lacy *v.* Sugarman (1873), 12 Heisk. (Tenn.) 354. The grant of a license does not validate a previous illegal transaction. Cp. Millar *v.*

United States (1872), 8 Ct. Cl. 407; but, it seems, such a license would be a bar to the Government's right to confiscate the property involved or to prosecute the offender.

" Containing such provisions and conditions."

All conditions imposed on the licensee must be strictly complied with. Vandyck *v.* Whitmore (1801), 1 East, 475; Camelo *v.* Britten (1824), 4 B. & A. 184; Warin *v.* Scott (1812), 4 Taunt. 615. A license to trade by implication gives authority to do all things necessary or proper to carry out the license. Kensington *v.* Inglis (1807), 8 East, 273; Usparicha *v.* Noble (1811), 13 East, 332; Morgan *v.* Oswald (1812), 3 Taunt. 554. See also Ex parte Baglehole (1812), 18 Ves. 526.

In Usparicha *v.* Noble, Lord Ellenborough, C. J., says: "The legal result of the license granted in this case is that not only the plaintiff, the person licensed, may sue in respect of such licensed commerce in our courts of law, but that the commerce itself is to be regarded as legalised for all purposes of its due and effectual prosecution. To hold otherwise would be to maintain a proposition repugnant to national good faith and the honour of the Crown. The Crown may exempt any persons and any branch of commerce, in its discretion, from the disabilities and forfeitures arising out of a state of war; and its license for such purpose ought to receive the most liberal construction. To say that the plaintiff might export goods specified in the license from Great Britain to any enemy's country for the benefit of himself or others (and the license contains no restriction in this particular), and yet to hold that where he has so done, he could not insure; or, having insured, could not recover his loss, either on account of his original character of a native Spaniard, or on account of the places to which or of the persons to whom the goods were destined, would be to convert the license itself into an instrument of deception and fraud. The Crown, in licensing the end, impliedly licensed all the ordinary legitimate means of attaining that end. For adequate purposes of state policy and public advantage, the Crown, it must be presumed, has been induced in this instance to license a description of trading with an enemy's country, which would otherwise be unquestionably illegal. Whatever commerce of this sort the Crown has thought fit to permit (which in respect of its prerogatives of peace and war the Crown is by its sole authority competent to prohibit or permit), must be regarded by all the subjects of the realm, and by the courts of law, when any question relative to it comes before them, as legal, with all the consequences of its being legal; one of which consequences is a right to contract with other subjects of the country for the indemnity and protection of such property in the course of its conveyance to its licensed place or destination, through an enemy's country, and for the purpose (as it probably will be in most cases) of being there delivered to an alien enemy, as consignee or purchaser. In the present case the license was obtained for the purpose of protecting the subject-matter insured in the course of its conveyance by sea from England to certain ports in Spain, to be there delivered to the purchasers thereof, who are the persons in whom the interest is averred in the first and second counts of this declaration: and the action is well brought, upon the principles above stated, in the name of the plaintiff for their benefit. For the purpose of this licensed act of trading (but to that extent only) the person licensed is to be regarded as virtually an adopted subject of the Crown of Great Britain; his trading, as far as the disabilities arising out of a state of war are concerned, is British trading; and, of course, any argument to be drawn from a virtual participation in and supposed privity to the acts of his own native country, then at war with the Crown of Great Britain, is excluded or superseded in point of effect by an express privity to and immediate participation in the adverse acts of the British Government. As far as the plaintiff and the Spanish purchasers of this cargo are concerned, they are actually privy to the objects of the British Government, and acting in furtherance thereof, and in direct opposition to the laws and policy of their own country. And it will not be contended to be illegal to insure a trade carried on in contravention of the laws of a state at war with us, and in furtherance of the policy of our country and its trade; and which this trade in question, sanctioned as it is by His Majesty's license, must be deemed to have been."

The general rule of interpretation of licenses is thus given by Lord Stowell in The Goede Hoop (1809), Edw. 327, 2 Roscoe P. C. 73: "It is not, therefore, in the power of this court to apply such an interpretation to a license as would be in direct contradiction to its express terms or to say that effect should be given to one part and not to another. If the permission is for a ship to go in ballast, it would be impossible for the court to say that it shall go with a cargo; for that would be, not an interpretation, but a contravention of the license. But where it is evident that the parties have acted with perfect good faith, and with an anxious wish to conform to the terms of the license, I presume that I am only carrying into effect the intention of the grantor when I have recourse to the utmost liberality of construction which it is in the power of this court to apply. As a general rule, therefore, it is to be understood that where no fraud has been committed, where no fraud has been meditated, as far as appears, and where the parties have been prevented from carrying the license into literal execution by a power which they could not control, they shall be entitled to the benefit of its protection, although the terms may not have been literally and strictly fulfilled."

Where the license has been out of date, the court has not shown a disposition to be pedantically narrow on this point or to notice a trifling excess. The Jonge Clara (1811), Edw. 371, 2 Roscoe P. C. 95. The court will take into consideration the diligence shown by the licensee, where the terms of the license have not been fully complied with. The Aeolus (1813), 1 Dod. 300, 2 Roscoe P. C. 173.

General licenses are to be construed liberally. Flindt *v.* Scott (1814), 5 Taunt. 674, but special licenses are more strictly construed. The Cosmopolite (1801), 4 C. Rob. 8; The Vriendschap (1801), 4 C. Rob. 96. Administrative acts under legislation of this character are liberally construed. Sawyer *v.* Steele (1819), 3 Wash. C. C. 464, F. C. No. 12,406; The Isabella (1810), 1 Paine, 1, F. C. No. 7101.

Suspension of performance of presumed illegal act.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

" The President . . . shall have authority to order the postponement of the performance of such act."

Some doubt may arise as to the constitutionality of this provision. Granting that the provision is valid, it would be applicable in all cases where the performance is to take place within the United States and the persons failing to perform, may set up this provision as well as the provisions of section 8 (e). The suspension of performance would be analogous to the operation of a moratorium. But where performance must take place outside the United States, the prohibition can not be set up as a defense to an action brought in a foreign court; trading with the enemy acts are penal and are not recognized extraterritorially. Cp. decision of Court of Appeals, The Hague, in Henkel & Co. *v.* Brice, Whyte & Sons, Ltd. (1916), Weekblad, No. 10,060, reversing, s. c. (1915), Weekblad, No. 9898, 1 International Law Notes, 43. In this case a Netherlands court refused to allow an English firm to set up the defense that under the English Trading with the Enemy Acts it was forbidden to pay to the creditor, a German firm. Such prohibition was held not to be *force majeure.*

As to the President's power in reference to judicial proceedings see *infra*, p. 230.

Export of coin or bullion.

(b) That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or ear-markings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed.

The master of a vessel is required to report such shipment. Section 14.

Alien Property Custodian.

Sec. 6. That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed $5,000 per annum) of an official to be known as the Alien Property Custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said Custodian under the provisions of this Act; and to hold, administer, and account for the same under the general direction of the President and as provided in this Act. The Alien Property Custodian shall give such bond or bonds, and in such form and amount, and with such security as the President shall prescribe. The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the provisions of this Act: *Provided*, That such clerks, investigators, accountants and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the Civil Service Law: *Provided further*, That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof.

Disclosure of stockholders, directors, and officers of corporations.

Sec. 7. (a) That every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall, under such rules and regulations as the President may prescribe and, within sixty days after the passage of this Act, and at such other times thereafter as the President may require, transmit to the Alien Property Custodian a full list, duly sworn to, of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company, or trustee has reasonable cause to believe to be an enemy or ally of enemy resident within the territory, or a subject or citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, of any ally of any nation with which the United States is at war, together with the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest.

The President may also require a similar list to be transmitted of all stock or shares owned on February third, nineteen hundred and seventeen, by any person now defined as an enemy or ally of enemy, or in which any such person had any interest; and he may also require a list to be transmitted of all cases in which said corporation, association, company, or trustee has reasonable cause to believe that the stock or shares on February third, nineteen hundred and seventeen, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another: *Provided, however,* That the name of any such officer, director, or stockholder shall be stricken permanently or temporarily from such list by the Alien Property Custodian when he shall be satisfied that he is not such enemy or ally of enemy.

" Corporation incorporated within the United States."

The provision applies to every corporation organized under Federal law or under the laws of any State or territory within the United States, regardless of the place where it is doing business. It does not apply to corporations existing under the laws of any foreign country and doing business within the United States. Upon the theory that shares in corporations are property, corporations would be bound to disclose such property under the next paragraph of this subsection.

" Transmit to the Alien Property Custodian a full list, etc."

The object is to give to the Government accurate information as to the amount of enemy-held property within the United States, and to prevent payment of dividends to enemy shareholders, or the exercise of control by enemy directors and shareholders or by enemy subjects wherever resident.

" Ora subject . . . residing, etc."

Reports are required not alone as to "enemies" (section 2) but also as to non-resident subjects of hostile countries.

Effect of war on enemy shareholders and directors.

Persons who are enemies within the meaning of the Act (section 2) ceased to be directors upon the passage of the Act. Daimler Co., Ltd. *v.* Continental Tyre & Rubber Co. (Great Britain), Ltd. (H. L.), [1916] 2 A. C. 307 (per Lord Atkinson). Directors who are alien enemies at common law ceased to be such at the outbreak of the war. The proxies of enemy shareholders executed before the war or before the Act, lapsed either at the beginning of the war or upon the passage of the Act, according to circumstances. (See *infra*, p. 269.) Robson *v.* Premier Oil & Pipe Line Co. [1915] 2 Ch. 124.

Effect of war on enemy shareholders' rights.

As to the effect of war on the interests of shareholders there is a difference of opinion. Dr. Baty, International Law in South Africa, c. 7, regards the position of shareholders as analogous to that of partners (see *infra*, p. 278) and suggests that the rights and liabilities terminate altogether at the outbreak of the war, leaving to the holder only an inchoate right to a share of the corporation assets at that moment. This view was also suggested in England at the beginning of the present war, but was rejected by the government. It is severely criticized in an article by Chadwick, in 20 Law Quarterly Review, 167, where it is shown that the inherent differences between corporations and partnerships and considerations of practical convenience are such as to demand a difference in treatment.

The generally accepted view is that the rights of shareholders are substantially rights of property. "The shares and debentures of companies incorporated under British law which are held by enemy subjects at the outbreak of a war will not cease to exist, but must continue as properties, whatever be decided as to the ownership of those properties. There is therefore no alternative, but either to confiscate them for the benefit of the British Government, which in many cases would be contrary to treaty and in all cases is now out of the question, or to regard the enemy shareholders and debenture holders as continuing to be such. To strike out the enemy subjects from the lists of persons interested, without more, would practically be to confiscate their properties for the benefit of the other shareholders, a proceeding which would be grotesque in its injustice, and which would fall within the spirit, if not within the letter, of treaties prohibiting confiscation. But the dividends on the shares and the interest on the debentures, so far as not represented by coupons payable to bearer, and of which therefore the ownership would not be apparent to the companies, cannot be paid to the enemy subjects during the war. After its close they will be entitled to claim the back dividends and interest, but not to interest on debentures after their maturity, subject, in the case of shareholders, to their paying any calls made in the meantime." Westlake on International Law, 49–50.

Lord Lindley, Companies (6th ed.), 53, and Page, War and Alien Enemies (2d ed.), 88, are also of opinion that the rights and liabilities of an enemy shareholder are merely suspended during the war. Bentwich, War and Private Property, 60, 61, while making an exception in regard to the so-called "private companies" of English law, accepts the general principles of suspension of rights. He also gives the considerations of policy against any other view: "The structure of modern commerce, and the vast number of companies which comprise shareholders of all nations, demand that the old thumb-rule about the abrogation of executory contracts, which was never meant to apply to these new circumstances, should not arbitrarily and unreasonably be extended to them. The interests of England, whose people have so much capital invested in foreign companies, would be severely prejudiced if such a scheme as Dr. Baty suggests, or even the rule of Lord Lindley, were universally adopted against us in case of war. In cases of private companies only, when a director is a domiciled, or a natural, enemy subject, it would seem desirable to rescind his rights and give him an equitable compensation at the outbreak of war, or if necessary wind up the whole concern; for the director of a private company is very much in the position of a partner. The article in the treaty between England and the United States of 1795, 'that neither debts due from the individuals of one nation to another, nor the shares nor the monies which they may have in public funds or in private or in public banks shall in any event of war be sequestrated or confiscated,' might well be extended now to the shares in public or private companies. And, further, it seems advisable to allow interest on shares and debentures held by alien enemies to run during war, even though it be not paid till the end of the war; and in return to maintain the liability of alien shareholders during war, unless there are special reasons against this. An exception would be made in favour of enemy shareholders when some peculiar hardship would result. Here the courts might grant equitable relief and give the holder the estimated value of his share before war. Postponement in the place of confiscation seems to provide the solution required by new commercial conditions. The treatment of companies during the Transvaal war points, at any rate, to a new custom, even though the precedents cannot be pressed; because in this case the companies, though nominally enemy, were largely British in membership."

That the rights of an enemy shareholder, are not terminated by the war appears to have been recognized in the case of the Pretoria-Pietersburg Railway, Ltd., where the order of the court held that the British Government succeeded to the shares held by the late South African Republic in a company incorporated in England, and also registered and doing business in the Transvaal, and thereby impliedly held that the Transvaal Government remained a shareholder even after the outbreak of war. Chadwick, Foreign Investments in Time of War, in 20 Law Quarterly Review, 167.

" President may also require, etc."

This provision was added by the Senate in order more effectually to control transfers made after the breaking off of diplomatic relations and before the declaration of a state of war with the German Empire. But actual transfers legally made prior to the beginning of the war, by any person are valid, and transfers made by persons who are not enemies at common law, but become such only under the definition of enemy or ally of enemy under section 2, are valid if made prior to the Act. See notes *supra*, pp. 42, 109, and *infra*, p. 259. See also section 7 (b) and notes thereto. Such lists were required by the Alien Property Custodian.

" Provided, however, etc."

The proviso applies to the list that may be required as of February 3, 1917, or as of any subsequent time.

Disclosure of property held for or debts due to enemy.

Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this Act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the Alien Property Custodian by written statement under oath, containing such particulars as said Custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen: *Provided,* That the name of any person shall be stricken from the said report by the Alien Property Custodian, either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy.

The President may extend the time for filing the lists or reports required by this section for an additional period not exceeding ninety days.

" Any person in the United States."

Strictly speaking, a person transiently within the United States is bound to report. This is, however, not in accord with the spirit of this provision, the aim of which is the ascertainment of property more or less permanently subject to the jurisdiction, and belonging to enemy or ally of enemy persons.

" Who holds, or has or shall hold or have custody or control by, etc."

The capacity in which such property is held, whether as agent, partner, attorney, executor, administrator, trustee, pledgee, warehouseman or other custodian, is immaterial.

" Any property."

Whether real or personal and regardless of value and, *semble*, regardless of the actual situs of the property. Enemy property received after October 6, 1917, must be reported within thirty days after it is received. As to shares in incorporated companies or unincorporated associations, see preceding paragraph. As to voluntary transfers to the Alien Property Custodian, see section 7 (d) (e). A debtor to an enemy does not hold or have custody of property for or on behalf of an enemy. In re Bank für Handel [1915] 1 Ch. 848. But he must report under the succeeding clauses of this section.

"Who is or shall be indebted in any way."

This applies to all debts, whether secured or unsecured, owing to an enemy or ally of enemy, and regardless of the place of payment. "Is indebted" refers to the date of the passage of the Act. Debts thereafter maturing must be reported within thirty days after they mature. As to payment to the Alien Property Custodian, see section 7 (d) (e). Property held for and debts owed to non-resident subjects of a hostile country, not otherwise "enemies" are not required to be reported.

"President may also require, etc."

See note to corresponding provision in preceding paragraph, *supra*, p. 179.

Effect of Act on transactions prior to date of passage.

(b) Nothing in this Act contained shall render valid or legal, or be construed to recognize as valid or legal, any act or transaction constituting trade with, to, from, for or on account of, or on behalf or for the benefit of an enemy performed or engaged in since the beginning of the war and prior to the passage of this Act, or any such act or transaction hereafter performed or engaged in except as authorized hereunder, which would otherwise have been or be void, illegal, or invalid at law. No conveyance, transfer, delivery, payment, or loan of money or other property, in violation of section three hereof, made after the passage of this Act, and not under license as herein provided shall confer or create any right or remedy in respect thereof; and no person shall by virtue of any assignment, indorsement, or delivery to him of any debt, bill, note, or other obligation or chose in action by, from, or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy have any right or remedy against the debtor, obligor, or other person liable to pay, fulfill, or perform the same unless said assignment, indorsement, or delivery was made prior to the beginning of the war or shall be made under license as herein provided, or unless, if made after the beginning of the war and prior to the date of passage of the Act, the person to whom the same was made shall prove lack of knowledge and of reasonable cause to believe on his part that the same was made by, from or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy; and any person who knowingly pays, discharges, or satisfies any such debt, note, bill, or other obligation or chose in action shall, on conviction thereof, be deemed to violate section three hereof: *Provided,* That nothing in this Act contained shall prevent the carrying out, completion, or performance of any contract, agreement, or obligation originally made with or entered into by an enemy or ally of enemy where, prior to the beginning of the war and not in contemplation thereof, the interest of such enemy or ally of enemy devolved by assignment or otherwise upon a person not an enemy or ally of enemy, and no enemy or ally of enemy will be benefited by such carrying out, completion, or performance otherwise than by release from obligation thereunder.

" Nothing in this Act . . . or invalid at law."

Transactions entered into after the beginning of the war and before the passage of the Act, i. e., between midnight of April 6, 1917, and October 6, 1917, are governed by common-law principles. This provision was expressly inserted to cover any question that might otherwise have been raised on the basis of statements in the case of Matthews *v.* M'Stea (1870), 91 U. S. 7, 23 L. ed. 188. In this case the United States Supreme Court held that commercial intercourse between persons in the United States and persons in the States adhering to the Confederacy was not unlawful until the passage of the Act of Congress of July 13, 1861, and the Proclamation of the President thereunder of August 16, 1861. The court (per Strong, J.,) said: "The single question which this record presents for our consideration is, whether a partnership, where one member of the firm resided in New York and the others in Louisiana, was dissolved by the war of the rebellion prior to April 23, 1861. That the Civil War had an existence commencing before that date must be accepted as an established fact. This was fully determined in The Prize Cases, 2 Black, 635; and it is no longer open to denial. The President's Proclamation of April 19, 1861, declaring that he had deemed it advisable to set on foot a blockade of the ports within the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, was a recognition of a war waged, and conclusive evidence that a state of war existed between the people inhabiting those States and the United States. It must also be conceded, as a general rule, to be one of the immediate consequences of a declaration of war and the effect of a state of war, even when not declared, that all commercial intercourse and dealing between the subjects or adherents of the contending powers is unlawful, and is interdicted. . . . Still further, it is undeniable that civil war brings with it all the consequences in this regard which attend upon and follow a state of foreign war. Certainly this is so when civil war is sectional. Equally with foreign war, it renders commercial intercourse unlawful between the contending parties, and it dissolves commercial partnerships. But, while all this is true as a general rule, it is not without exceptions. A state of war may exist, and yet commercial intercourse be lawful. They are not necessarily inconsistent with each other. Trading with a public enemy may be authorized by the sovereign, and even, to a limited extent, by a military commander. . . . It being, then, settled that a war may exist, and yet that trading with the enemy, or commerical intercourse, may be allowable, we are brought to inquire whether such intercourse was allowed between the loyal citizens of the United States and the citizens of Louisiana until the 23d of April, 1861, when the acceptance was made upon which this suit was brought. And, in determining this, the character of the war and the manner in which it was commenced ought not to be overlooked. No declaration of war was ever made. The President recognized its existence by proclaiming a blockade on the 19th of April; and it then became his duty as well as his right to direct how it should be carried on. In the exercise of this right, he was at liberty to allow or license intercourse; and his proclamations, if they did not license it expressly, did, in our opinion, license it by very cogent implications. It is impossible to read them without a conviction that no interdiction of commercial intercourse except through the ports of the designated States, was intended. . . . If, however, the proclamations, considered by themselves, leave it doubtful whether they were intended to be permissive of commercial intercourse with the inhabitants of the insurrectionary States, so far as such intercourse did not interfere with the blockade, the subsequent Act of

Congress passed on the thirteenth day of July, 1861, ought to put doubt at rest. The Act was manifestly passed in view of the state of the country then existing, and in view of the proclamation the President had issued. It enacts, that in a case therein described, a case that then existed, 'it may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such State, or any section or part thereof where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof, and the citizens of the rest of the United States, shall cease and be unlawful so long as such condition of hostility shall continue.' Under authority of this Act, the President did issue such a proclamation on the 16th of August, 1861; and it stated that all commercial intercourse between the States designated as in insurrection and the inhabitants thereof, with certain exceptions, and the citizens of other States and other parts of the United States, was unlawful. Both the Act and the proclamation exhibit a clear implication, that before the first was enacted, and the second was issued, commercial intercourse was not unlawful; that it had been permitted. What need of declaring it should cease, if it had ceased, or had been unlawful before? The enactment that it should not be permitted after a day then in the future must be considered an implied affirmation that up to that day it was lawful; and certainly Congress had the power to relax any of the ordinary rules of war."

The decision in Matthews *v.* M'Stea is sustainable on the peculiar legal conditions of the Civil War, which was first regarded as a mere rebellion on the part of certain citizens, and was only later recognized as producing all of the legal effects of a war between sovereign states. That a war with a foreign country immediately interdicts all commercial intercourse is an unquestioned principle of the English and American law. "By a universally recognized principle of public law, commercial intercourse between states at war with each other, is interdicted. It needs no special declaration on the part of the sovereign to accomplish this result, for it follows from the very nature of war that trading between the belligerents should cease." Per Davis, J., in United States *v.* Lane (1868), 8 Wall. 185, 19 L. ed. 445. So also Lord Wrenbury, in British and Foreign Insurance Co., Ltd., *v.* Sanday & Co. [1916] 1 A. C. 650: "The declaration of war amounts to an order to every subject of the Crown to conduct himself in such way as he is bound to conduct himself in a state of war. It is an order to every militant subject to fight as he shall be directed, and an order to every civilian subject to cease to trade with the enemy." As the result of this interdiction all contracts entered into after the outbreak of war between persons divided by the line of war, are with certain well defined exceptions, void. See *supra*, p. 109. The court in Matthews *v.* M'Stea takes the view that the proclamations issued in the early part of the Civil War left it doubtful as to whether all commercial intercourse should be regarded as prohibited. During the present war there is no doubt that all actions of the Government indicated that such intercourse should cease. Furthermore, the language of the Act of Congress of July 13, 1861, is such as to indicate that until the President should issue a proclamation to this effect, commercial intercourse should be considered as not prohibited.

The Act, therefore, leaves all acts done prior to the Act, to be determined by the common law.

Although this paragraph refers only to "enemies" and not to "allies of enemy" the same doctrine applies. As has been already pointed out, *supra*, p. 42, persons residing in a country not at war with the United States, although the country of their residence is an ally of the country with which the United States is at war, are not alien enemies at common law, and transactions with these persons are governed solely by the Act.

From the date of its passage, the Act alone governs all transactions within its scope, whether with "enemies" or "allies of enemy" as defined therein. It also declares invalid all future transactions with enemies (but not allies of enemy), "which would otherwise have been or be void, illegal, or invalid at law," i. e., at common law.

" No conveyance . . . shall confer or create any right or remedy in respect thereof."

This is prospective in its operation. It makes every conveyance, transfer, delivery, payment, or loan of money or other property in violation of section 3, void. It is to be noted that this paragraph applies only to certain acts done in violation of section 3.

There are other acts prohibited by section 3 that are not covered by the wording of this or by that of the next succeeding paragraph, e. g., the entering into of a purely executory contract of sale. *Quaere*, whether by the enumeration of the transactions not giving rise to civil rights and liabilities, the Act leaves other transactions enforceable, though subjecting the parties thereto, in so far as they acted within the United States, criminally liable.

" No person shall by virtue of any assignment . . . to violate section three hereof."

This paragraph places the endorsee or assignee under an endorsement or assignment made after April 6, 1917, in the same position as the person who was the holder or owner on that date.

The language is taken from the English Act (*supra*, p. 105). See Weld *v.* Fruhling (1916), 32 T. L. R. 469, *supra*, p. 105. The Act of Congress is retrospective in its operation and affects not alone transfers made by certain persons who became alien enemies by virtue of the declaration of a state of war with the German Empire, but transfers by, from, etc., any person who is an "enemy" or "ally of enemy" within the meaning of the Act. At common law, a non-enemy endorsee can sue on a negotiable instrument held by him under an endorsement made after the outbreak of war but under circumstances not involving trading with the enemy. See *supra*, p. 105. In so far as this paragraph through its retrospective operation impairs the rights of persons within the protection of the Fifth Amendment, it is submitted that this paragraph is unconstitutional as depriving these persons of property without due process of law.

It is to be noted that the paragraph fixes the beginning of the war as the date. Transfers made before that time, even "in contemplation thereof," (cp. language of succeeding proviso) are valid. The words "prior to the beginning of the war and not in contemplation thereof" are obviously inserted to cover the period between the severance of diplomatic relations, February 3, 1917, and the declaration of a state of war with the German Empire, April 6, 1917. For a consideration of the legal consequences attaching to a severance of diplomatic relations and to the imminence of war, see *supra*, p. 42. What has been said as to the constitutionality of the preceding paragraph applies with equal force here, and *a fortiori* to assignments made in contemplation of war, but before the actual declaration thereof.

" Nothing in this Act . . . from obligation thereunder."

The primary purpose of this proviso is to cover cases where an enemy or ally of enemy is still a legal party to the transaction, but where his interest therein is a purely nominal one. A typical case is that of a mortgage originally executed in favor of a person who is now an enemy or ally of enemy under the Act, but who before the war, and not in contemplation thereof, has assigned his rights as mortgagee to a non-hostile person, but still remains liable in case of a deficiency. While a payment of such a mortgage by reason of the fact that it discharges the enemy from this liability is a payment for the benefit (within section 3) of such enemy, transactions of this character are expressly permitted.

Payments to persons within United States out of funds belonging to an enemy.

Nothing in this Act shall be deemed to prevent payment of money belonging or owing to an enemy or ally of enemy to a person within the United States, not an enemy or ally of enemy, for the benefit of such person or of any other person within the United States, not an enemy or ally of enemy, if the funds so paid shall have been received prior to the beginning of the war and such payments arise out of transactions entered into prior to the beginning of the war, and not in contemplation thereof: *Provided*, That such payment shall not be made without the license of the President, general or special, as provided in this Act.

" Nothing in this Act, etc."

This provision is complementary to that contained in the preceding paragraph. It permits, for example, the payment of a sight draft drawn prior to the war by a German bank against funds in New York, or a bill of exchange drawn in Germany and accepted here, or the carrying out of the terms of a contract confirming a credit.

Payments may be made to or for the benefit of any person within the United States even of hostile nationality, provided he is not an enemy or ally of enemy within the meaning of section 2.

The funds out of which payments are made must have been received prior to midnight of April 6, 1917, and the payments must arise out of transactions entered into prior to that date, and not made in contemplation of war. Cp. notes to preceding paragraph of the Act.

In all cases a license of the President is required. See section 5 (a).

Suits by and against enemy. Licenses. Defenses.

Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in section ten hereof: *Provided, however*, That an enemy or ally of enemy licensed to do business under this Act may prosecute and maintain any such suit or action so far as the same arises solely out of the business transacted within the United States under such license and so long as such license remains in full force and effect: *And provided further*, That an enemy or ally of enemy may defend by counsel any suit in equity or action at law which may be brought against him.

Receipt of notice from the President to the effect that he has reasonable ground to believe that any person is an enemy or ally of enemy shall be prima facie defense to any one receiving the same, in any suit or action at law or in equity brought or maintained, or to any right or set-off or recoupment asserted by, such person and based on failure to complete or perform since the beginning of the war any contract or other obligation. In any prosecution under section sixteen hereof, proof of receipt of notice from the President to the effect that he has reasonable cause to believe that any person is an enemy or ally of enemy shall be prima facie evidence that the person receiving such notice has reasonable cause to believe such other person to be an enemy or ally of enemy within the meaning of section three hereof.

"Nothing in this Act shall be deemed to authorize the prosecution of any suit or action . . . in any court . . . prior to the end of the war."

As to right to sue for infringement of patents, etc., see section 10. With this exception, the Act neither authorizes nor forbids the institution or prosecution of suits or actions at law or in equity, but leaves this to determination according to existing law. There is, however, the prohibition against trading [section 3 (a)] for or on behalf of an enemy or ally of enemy, or communicating with such person [section 3 (d)] effectively preventing in most cases any steps being taken in matters of this character. As to position of attorneys acting for alien enemies, see *infra*, p. 229.

When a transaction is licensed under the Act, the enemy party thereto is *pro hac vice* in the position of an alien friend, and can sue in respect of matters arising out of the licensed transaction. Crawford *v.* The William Penn (1815), Peters C. C. 106, F. C. No. 3372. "In the present instance no public policy is contravened by sustaining and giving effect to such a trust; but, on the contrary, this country, in furtherance of the same policy which allows the granting of licenses to authorize the trade right to give effect to the ordinary means of indemnity (policy of insurance), by which that trade (from the continuance of which the public must be supposed to derive benefit) might be best promoted and secured." It was accordingly held that a British agent of an alien enemy could sue on an insurance policy issued on a venture duly licensed, although he sued in trust for an alien enemy. Kensington *v.* Inglis (1807), 8 East, 273, per Lord Ellenborough, C. J., distinguishing Bristow *v.* Towers (1794), 6 T. R. 35, and Brandon *v.* Nesbitt (1794), 6 T. R. 23. But, he continues, "the king's license, cannot, in point of law, have the effect of removing the personal disability of the (alien enemy) trader in respect of suit, so as to enable him to sue in his own name." But this cannot be regarded as law now, if, indeed, it ever was. Trotter (Supp.) 64. It is distinctly repudiated in Crawford *v.* The William Penn (1815), 1 Peters C. C. 106, F. C. No. 3372: "It is clear, therefore, that wherever the trade with an enemy, and consequently a contract founded thereon, are rendered lawful by the license of the sovereign, the objection to the person of the plaintiff, on the ground of his being an alien enemy, is merely technical and *stricti juris*, Although the reason on which the rule was founded, does not exist in such a case, the court being bound to support the beneficial interest of such licensed alien enemy; yet it does not appear that any judge of the common-law courts of England, has thought himself at liberty to entertain such a suit, if brought in the name of the alien enemy. Yet I know of no case in which it has been decided, upon the point coming directly in judgment, that such an action could not be maintained. In the case of Cornu *v.* Blackburne, Dougl. 641, the action was supported in the name of the alien enemy upon a ransom bond; but no plea was put in to bar the right of the plaintiff to sue; and the cause was decided upon another point. In Anthon *v.* Fisher, Dougl. (note) 649, it was laid down generally, that an alien enemy cannot, by the municipal laws of England, sue for the recovery of a right acquired by him in actual war; but the particular case in which that decision was given, was that of a ransom bond; and of course the decision of the court should be considered as applicable to such a case. But the case of a ransom bond, is very different from that of a contract arising out of a licensed trade. In the former, the hostile character of the obligee is in no respect removed; on the contrary, it is an act of hostility which gives rise to it. In the latter case, the hostile character of the party with whom the contract is made, does not attach either to him or to the contract. He is to be regarded (in the words of Lord Ellenborough) virtually as an adopted subject of Great Britain, and his trade as British trade. If he is to be so considered, it would seem to follow, that all objection to a suit being maintained in the name of such adopted subject, would be at an end; as much so, as if the plaintiff were, at the time of bringing suit, personally within the British dominions. It must, nevertheless, be acknowledged, that, in the case of Kensington *v.* Inglis, 8 East, 273, the court seemed to be of opinion, that, even in the case of a licensed trade, the suit cannot be maintained in the name of the alien enemy. But, as the suit was in the name of a subject, the opinion, as to this point, was not essential to the decision of the cause; and, of course, it ought not to rank higher than an *obiter dictum*. This examination of the subject has been intended to show, that, in cases where the contract upon which the suit is brought, arises out of a licensed trade, and objection founded upon the disability of the nominal plaintiff to maintain the action, on the ground of alien enemy, is extremely feeble; and can only be supported by a tenacious adherence to a rigid rule of the common law, notwithstanding the reason of the rule, should, in this particular case, have ceased. The question then is does this rule apply in all its rigour, to courts acting under the general law of nations, and proceeding according to the civil law? I think it does not. Bynkershoek, appears to be very strong upon this subject. He says, that where commerce is permitted amongst enemies, contracts, and actions founded upon them, are permitted; 'for who,' he asks, 'will sell and carry goods to an enemy, without the right of recovering the price of them? and what hope can there be of recovering that price, if one cannot judicially compel payment from his enemy purchaser.' In cases of this nature, in courts proceeding according to the civil law, the only question is, has the plaintiff a *persona standi in judicio?* Can he be heard as a plaintiff in that court? Bynkershoek, in the above quotations, gives the answer. The right to sue, and to compel payment, is a necessary incident to his right to trade and to contract. This doctrine of Bynkershoek, has received the entire approbation of Sir William Scott, in the case of The Hoop, in which he gives the sense of that learned jurist as amounting to this, that the legality of commerce, and the mutual use of courts of justice, are inseparable."

The disability arising from enemy alienage may be removed by general or special license. As to the power of the President to remove the disabilities of enemy alienage as to the nationals of an ally of enemy, see section 5 (a). Thus, Story, J., in Society for the Propagation of the Gospel *v.* Wheeler (1814), 2 Gall. 105, F. C. No. 13,156, says: "In respect to the corporation itself, although established in Great Britain, it may have the safe conduct or license of the government of the United States for its property, and the maintenance of its corporate rights. It is clearly competent for the government, under the general rights of war, to grant letters of protection, and thereby to suspend the hostile character of any person; and when he has such protection, wherever he may be domiciled, he is to be considered, *quoad hoc*, a neutral. Bynk. Q. J. Pub. cap. 7; Usparicha *v.* Noble, 13 East, 332. Nor is there, in this respect, any difference between a corporation and an individual. And it would be highly injurious to humanity, as well as public policy, if institutions established in a foreign country for religious, literary or charitable purposes, might not, during war, obtain protection and patronage for their laudable exertions to soften private misery and diffuse private virtue." The grant of a license restores the standing in court of an alien enemy. United States *v.* One Hundred Barrels Cement (1862), F. C. No. 15,945.

Enemy plaintiffs.

The statement is frequently made by courts and authors of text books that it is a principle of international law that alien enemies have no right to institute or maintain judicial proceedings. In support of this statement the views of some of the older writers on international law, notably Bynkershoek, are cited. Even if this view was once correct, there is no such universality of practice to-day, as to warrant the view that the disability to sue is one arising under international law. Like the prohibition of trading with the enemy, it is based solely on provisions of municipal law. The interpretation placed upon article 23 (h) of the Regulations respecting the Law and Customs of War on Land, annexed to the Fourth Convention of 1907, by continental authorities, is against the view.

The true view is that the disability is one based on the enforcement of a national public policy. This is well stated by Gould, J., in Bonneau *v.* Dinsmore (1862), 23 How. Pr. (N. Y.) 397: "An enemy is not allowed to enforce (in our courts) the collection of any claims against our own citizens, because (in the words of Ellsworth, C. J., in the case of Hamilton agt. Eaton, before the U. S. circuit court in North Carolina, in 1792,) 'it would be dangerous to admit him into the country or to correspond with agents in it; and also because a transfer of treasure from the country to his, would diminish the ability of the former and increase that of the latter to prosecute the war.' The whole ground of excluding a public enemy from our courts is one exclusively of public policy, and wherever public policy would carry the rule, the courts should be bound by it." To the same effect: Korziwiski *v.* Harris Construction Co. (1916), 18 Que. P. R. 97. This national public policy is one well established in the Anglo-American common law, and receives definite formulation in the trading with the enemy acts.

Upon the point as to the extent to which the aforesaid article 23 (h) of the Regulations respecting the Law and Customs of War on Land, imposes a limitation by treaty, see *supra*, p. 44.

As early as 1220 (Bracton's Note Book, case 110), a distinction appears to have been made between alien friends and alien enemies in regard to capacity to sue, and the defense of alien enemy appears to have been allowed. Although for a period thereafter the distinction between alien friends and alien enemies appears to have been lost sight of, probably due to the fact that neither class was regarded as having any very substantial rights (cp. Littleton, 198), the distinction reappears in a case decided in 1454 (Y. B. 32 Hen. 6, 23) where it was held that an alien nee could sue in trespass if he came to the country under license and safe conduct, "mes sil soit enemy le roy et viet̄ eins sans licence ou safe conduite auter est." And in a case decided in 1479 (Y. B. 19 Edw. 4, 6) it was said that an obligation in favor of an enemy was void, but *semble* the king will have it. So in 1514 "notwithstanding he is an alien, yet he shall be received in all personal actions, if there be no war between this realm and the kingdom to which the alien belongs, etc., for then he is an enemy of our lord the king in which case he shall have no benefit from his laws." 1 Dyer, 8. The same view is set out in a case (Owen, 45) decided in 1589 in denying an action by an alien enemy: "for the court will not suffer that any enemy shall take advantage of our law." See article by McNair, Alien Enemy Litigants, in 31 Law Quarterly Review, 154, to which the writer is indebted for a number of citations made herein.

Coke on Littleton, 129, says. "In this case the law doth distinguish between an alien that is a subject to one that is an enemy to the king, and one that is subject to one that is in league with the king; and here it is, that an alien enemy shall maintain neither real nor personal action, *donec terræ fuerint communes*, that is, until both nations be in peace; but an alien that is in league shall maintain personal actions; for an alien may trade and traffick, buy and sell and therefore of necessity he must be of ability to have personal actions, but he cannot maintain either real or mixt actions. . . . So as the tenant or defendant shall neither plead alien nee to the writ or to the action but in disability of the person, as in case of villenage or outlawry before. And Littleton is to be intended of an alien in league; for if he be an alien enemy, the defendant may conclude to the action."

In Calvin's Case (1608), 7 Rep. 18 a, it is said that if an "alien becomes an enemy (as all alien friends may) then he is utterly disabled to maintain any action or get any thing within this realm" with an exception in favor of the "*inimicus permissus*, an enemy that cometh into the realm by the king's safe conduct."

At the beginning of the seventeenth century it appears to be established that the plea of alien enemy was good in personal actions—with a saving for the alien enemy who was in possession of a safe-conduct.

Dr. Baty and Professor Morgan, War, its Conduct and Legal Results, 249–251, say that there is no trace in the earlier authorities of any theory that it is the place where a person dwells or trades, or dwells and trades, that makes him a friend or an enemy. "The very conception of domicile had not then arisen. Had the case been otherwise, all discussion of whether and how far private violence against the alien enemy was lawful could never have had any practical meaning. For if everyone living in England was entitled to the privileges of an Englishman, there could seldom or never have been any question about the matter. Nor could the burning question of the confiscation of their goods often have arisen. It is clear, therefore, that the alien enemy is determined to be such by his nationality, so far as Coke is concerned. And until we arrive at a very much later date, there is no hint of any general doctrine of determining the capacity of parties or their legal rights by the place of their establishment rather than by their simple national character, derives (in English estimation) from the locality of their birth. The only qualification to which Coke alludes is the possibility of an *inimicus permissus*—the holder of an express and individual safe conduct."

By analogy to the doctrines of prize law, there gradually emerges towards the close of the eighteenth century the distinction based on the domicile of the litigants. It is shown in the requirement of the averment that the plaintiff was adhering to the enemy, in addition to the averment of alien enemy. In 1776 the general rule of the common law was well established, that non-resident alien enemies were incapacitated from instituting or maintaining suits, and that resident alien enemies under license of the government had the same rights as alien friends. Hamilton *v.* Eaton (N. C. 1792) cited in Bonneau *v.* Dinsmore (1862), 23 How. Pr. (N. Y.) 397. This rule was consistently applied during the War of 1812. Mumford *v.* Mumford (1812), 1 Gall. 366, F. C. No. 9918; Society for the Propagation of the Gospel *v.* Wheeler (1814), 2 Gall. 105, F. C. No. 13,156; Clarke *v.* Morey (1813), 10 John. (N. Y.) 69. And during the Civil War. Caperton *v.* Bowyer (1871), 14 Wall. 216, 20 L. ed. 882, and often.

There is a tendency observable in the American decision to place further restriction on the rule of disability, by requiring strict proof of the fact of enemy character [cp. Society for the Propagation of the Gospel *v.* Wheeler (1814), 2 Gall. 105, F. C. No. 13,156] and by assuming an implied license in favor of resident alien enemies [Clarke *v.* Morey (1813), 10 John. (N. Y.) 69; Bagwell *v.* Babe (1823), 1 Rand. (Va.) 272]. It was even suggested by Chancellor Kent, [Bradwell *v.* Weeks (1814), 1 John. Ch. (N. Y.) 206], that an alien enemy may be entitled to sue when he is ordered out of the country in consequence of the war.

This liberality of view has characterized the decisions rendered in the United States during the present war. Cp. language of McAvoy, J., in Schultz, Jr., Co., Inc., *v.* Raimes & Co. (1917), 99 N. Y. Misc. 626, 166 N. Y. Supp. 567. So too, Speer, D. J., in Plettenberg, Holthaus & Co. *v.* Kalmon & Co. (1917), 241 Fed. 605, refusing to follow Howes, Hyatt & Co. *v.* Chester & Co. (1861), 33 Ga. 89, and holding that pending actions should be suspended and not dismissed: "With the evolution of law, the courts of the English-speaking peoples exhibit greater magnanimity in affording opportunity of redress to alien enemies. Notwithstanding a ruling of Sir William Scott, afterwards Lord Stowell, made in 1799, to the contrary, the British prize courts of to-day hear any alien enemy asserting rights under a convention of the Hague Peace Conference. Shall the courts of the United States then wholly deny a hearing to one, not such when he here sought redress, but who has since become an alien enemy? To do this would not, in my judgment, accord with the spirit of our institutions, nor with the spirit of our government, which disclaimed hostilities to the German people when it proclaimed war in defense of freedom and of a common humanity." Accord: Speidel *v.* N. Barstow Co. (1917), 243 Fed. 621; Arndt-Ober *v.* Metropolitan Opera Co. (N. Y., 1918), N. Y. L. J., Jan. 25, 1918.

Finally, the New Jersey Court of Chancery, in Posselt *v.* D'Espard (1917), 100 Atl. 893, per Lane, V. C., held on the broad ground that "the doors of the court are open to all persons who properly behave themselves" that a suit instituted by two co-plaintiffs, one of whom was a resident alien enemy and the other a corporation incorporated and having its place of business in the German Empire should not be suspended. "The bill is for the preservation of the rights of the complainants as stockholders in a New Jersey corporation and also in the interest of the New Jersey corporation for the protection of its rights against the action of the defendants. The German corporation is a majority stockholder, practically the owner, of the New Jersey corporation. The charge is that the defendants have deliberately set about to wreck the New Jersey corporation. No money decree is prayed for. If I should deny relief upon the ground stated by the defendants, then the property of alien enemies within this country, acquired in time of peace, may be ruthlessly taken away from them, not by the government, but by individuals, subject only to the restraint of criminal law. I am familiar of course with the very many learned opinions of publicists of other days, and also with the opinions of the Supreme Court of the United States, but I think that at this time to attempt to consider them in detail would unduly extend this opinion, and in the view that I take of the present situation would be wholly unwarranted. The right of government to confiscate property of alien enemies and close the doors of its courts to them, whether resident here or elsewhere, may be conceded. Whether that right is to be exercised is a matter of policy. The modern trend is to discourage interference with property rights, whether of friends or enemies, in time of war, except so far as may be necessary to effectively accomplish the objects of the war. The solution of the problem now before me, I think, is found in the President's message to Congress, which in view of the nature of its reception by Congress and the action of Congress under it has become the voice of the country; and the President's proclamation declaring a state of war and defining rights of residents, an official act under authority of Congress. German residents who comply with needful regulations and who properly conduct themselves are assured that they will be undisturbed in the peaceful pursuit of their lives and occupations and be accorded the consideration due to all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States. To shut the door of the court in the face of an alien enemy resident here would be a distinct violation of not only the spirit but the letter of this proclamation.

"With respect to the alien enemy resident in Germany the situation is somewhat different, but I think not essentially so. The President has very carefully distinguished between the German government and the German people, and the sins of that government ought not be visited upon the people except so far as the legitimate interests of the United States require. I am convinced that there is no interest of the United States which requires the court, in advance of a definite command by the constituted authorities, to refuse to protect, at their instance, the rights of alien enemies resident abroad in property in this country. If it be said that this is in conflict with certain prior decisions the answer is that the solution of the question depends upon public policy, and while it is not the function of the court to establish a public policy, it is the function and the duty of the court to determine as a matter of fact what the policy actually is, and it is the policy of the present day, not that of some years ago, that must be determined. Tolerance is the keynote of the President's proclamation, and by that I am bound. If the contention is made that to permit alien enemies resident abroad to sue in our courts would be to lend aid and comfort to the enemy, I think the answer is that either the court or the government may so act as to prevent any property coming into the possession of the enemy. I am unwilling to concede that either the government or the courts are powerless to prevent aid and comfort being given to the enemy without exercising the drastic power of refusing absolutely at the instance of an alien enemy to protect property rights within this country. I think the doors of the court are still open to all persons who properly behave themselves." Denying the right of a non-resident enemy to sue: Norddeutsche Ins. Co. *v.* Dudley (N. Y., 1918), N. Y. L. J., Jan. 11, 1918.

Where the nature of the claim is such that a non-resident alien enemy can appear as plaintiff, no distinction can be made by reason of the official or non-official character of the person. During the present war, the government of the German Empire has appeared as claimant before the English Prize Court. The Ophelia (1915), 1 Trehern P. C. 210; (1916), 2 Trehern P. C. 150.

Non-resident alien enemies as claimants in prize courts.

Special rules govern the position of alien enemies appearing as claimants before the Prize Courts. There is some difference of opinion as to whether such claimant is legally in the position of a plaintiff or in that of a defendant. According to Mr. Justice Story, in his work, Notes on the Principles and Practice of Prize Courts (ed. by Pratt, 1854) 21, an enemy cannot "interpose a claim unless under the protection of a flag of truce, a cartel, license, pass, treaty, or some other act of the public authority suspending his hostile character." This is substantially based on the words of Lord Stowell in The Hoop (1799), 1 C. Rob. 196, 1 Roscoe P. C. 104. The earlier English cases are reviewed by Van Ness, J., in Johnston *v.* Thirteen Bales (1814), 2 Paine, 639, F. C. No. 7415, and the result reached that alien enemies have no standing as claimants in prize courts, unless it appear that there are circumstances taking them *pro hac vice* out of the class of enemy persons.

The whole question was elaborately argued before Sir Samuel Evans, the President of the English Prize Court, in the case of The Möwe [1915], P. 1. It was held that "whenever an alien enemy conceives that he is entitled to any protection, privilege or relief under any of The Hague Conventions of 1907, he shall be entitled to appear as a claimant and to argue his claim before this court." The right to appear conceded under the decision in the Möwe Case is in addition to any rights that the claimant may have to appear under the views laid down by Lord Stowell and Justice Story, *supra*. The practical effect of this ruling is that enemy claimants believing themselves to be entitled to any rights are entitled to appear.

In the argument in the Möwe Case it is interesting to note that both counsel for the claimant and Sir John Simon, the Attorney-General, argued in favor of the right of an alien enemy claimant to appear under the circumstances. In the course of the argument to the court the Attorney-

General stated that in the event that the existing law did not give a right to appear, the government would be prepared to issue an order in council to that effect. Upon a suggestion by the court that possibly an order in council might not be sufficient, the Attorney-General stated that in that event the government was prepared to grant a right of this character by an act of Parliament.

Right of non-resident alien enemy to prove in bankruptcy.

Upon the question of the right of an alien enemy to prove in bankruptcy the leading case is Ex parte Boussmaker (1806), 13 Ves. 71. In this case is was held that the claim of an alien enemy should be admitted in bankruptcy, but under reservation of payment of dividends during the war. The Lord Chancellor said: "If the two nations were at peace at the date of the contract, from the time of war taking place the creditor could not sue; but, the contract being originally good, upon the return of peace the right would survive. It would be contrary to justice, therefore, to confiscate this dividend. Though the right to recover is suspended, that is no reason why the fund should be divided among the other creditors. The point is of great moment from the analogy to the case of an action, and it is true a court of law would not take notice of the objection without a plea. It must appear upon the record. Has the case of a contract originally good, and the right suspended by war, never before occurred? Yet I do not know an instance of an application by an alien enemy to the court to keep the fund until his right to sue should survive. The policy, avoiding contracts with an enemy, is sound and wise; but where the contract was originally good, and the remedy is only suspended, the proposition, that therefore the fund should be lost, is very different. Let a claim be entered and the dividend be reserved."

The case, however, is not an authority for the proposition that an alien enemy has the right to institute suit to revise or vary the decision of a trustee in bankruptcy rejecting his proof in whole or in part. In re Wilson, Ex parte Maruna (1915), 113 L. T. 1116. Regarding the case of Ex parte Boussmaker, Lord Reading, C. J., in Porter *v.* Freudenberg [1915] 1 K. B. 857, says: "This differs from a case in which the alien enemy comes into court to prove the existence of the debt and claim judgment for the amount. It must not, however, be regarded as an authority for the proposition that an alien enemy can present a petition to the court and be heard upon it. There was no argument before the Lord Chancellor as to whether such a petition could be presented by an alien enemy, and the point does not appear to have been considered. According to the report of the case, no interest was represented before his Lordship except that of the petitioner, but from the record, which we have had the opportunity of examining, it appears that the assignees in bankruptcy were also represented. The petitioners' argument was that there was a valid debt, and that therefore a sufficient amount should be reserved from the fund to be distributed. The Lord Chancellor, having expressed the opinion that the contract was valid and the debt due, had nevertheless become aware that the alien enemy would be entitled on restoration of peace to payment of a dividend upon his debt, and his Lordship thought the right and convenient course was to enter the claim and reserve the amount until after the war. It is as if a trustee in bankruptcy, about to distribute funds arising from the debtor's estate to the credtiors, received notice of a claim by an alien enemy and, having satisfied himself as to its validity, kept in his hands sufficient to pay a dividend on the debt after the conclusion of the war."

It has been suggested that the proper proceeding is for the trustee not to reject the proof of claim but to postpone till the end of the war. Scrutton, L. J., in In re Hilckes, Ex parte Muhesa Rubber Plantations, Ltd. [1917] 1 K. B. 48, says: "I respectfully dissent from the decision of the learned Judge (of the court below) that this was an enemy company, and therefore not entitled to prove and I only desire to say further that if it had been I do not think that the trustee would have been justified in rejecting the proof. The claim would have had to be postponed till the end of the war. It would therefore be a future liability which the trustee would be bound to assess, and, admitting the proof and assessing the claim, retain the money, giving the Public Trustee notice, until the end of the war." Lord Cozens-Hardy, M. R., stated that in view of the circumstances it was unnecessary to say anything about Boussmaker's Case.

Resident alien enemies as plaintiffs.

It has been shown that as early as the middle of the fifteenth century resident alien enemies under a license or safe conduct were permitted to sue. This doctrine is reaffirmed in Wells *v.* Williams (1698), 1 Ld. Raym. 282; 2 Lutw. 34; 1 Salk. 45: "If an alien enemy comes hither *sub salvo conductu*, he may maintain an action; if an alien enemy comes hither in time of peace, *per licentiam domini regis*, as the French Protestants did, and lives here *sub protectione*, and a war afterwards begins between the two nations, he may maintain an action; for suing is but a consequential right of protection; and therefore an alien enemy, that is here in peace under protection, may sue a bond; *aliter* of one commorant in his own country (see Bur. 1734; Doug. 619, 2 ed. n. 132; Fortes. 221)."

In Sylvester's Case (1691), 7 Mod. 150, it was pleaded in abatement that the plaintiff was an alien enemy and there was a demurrer to this. The court held that "if an alien enemy come into England without the Queen's protection . . . he shall have no advantage of the law of England nor for any wrong done him here; but if he has a general or a special protection" he should plead it. A replication of license and protection was held good. George *v.* Powell (1717), Fortescue, 221.

In Boulton *v.* Dobree (1808), 2 Camp. 163, it was held that a resident alien enemy must prove his license. Lord Ellenborough said: "Although he went at large, it did not appear that government knew he was in the Kingdom. To support the replication it was necessary either to produce a protection granted to Elieson as an alien enemy or to show in some way that his stay here had been sanctioned by the King after the commencement of hostilities." Accord: Alciator *v.* Smith (1812), 3 Camp. 244.

The leading American case is Clarke *v.* Morey (1813), 10 John. (N. Y.) 69, in which Kent, C., delivered the opinion of the court: "The second plea states that the plaintiff is an alien, born out of the allegiance of the United States, and under the allegiance of the king of the United Kingdom of Great Britain and Ireland, and not naturalized, and that war exists between the United States and the said kingdom; and that the plaintiff came into the United States and remains here without any letters of safe conduct from the President of the United States, or any license to remain here. . . . In the case before us, we are to take it for granted (for the suit was commenced before the present war) that the plaintiff came to reside here before the war, and no letters of safe conduct were, therefore, requisite, nor any license from the President. The license is implied by law and the usage of nations; if he came here since the war, a license is also implied, and the protection continues until the executive shall think proper to order the plaintiff out of the United States; but no such order is stated or averred. This is the evident construction of the Act of Congress of the 6th July, 1798, entitled 'An Act respecting Alien Enemies.' (Sess. 1. cong. 5. c. 73.) Until such order, the law grants permission to the alien to remain, though his sovereign be at war with us. A lawful residence implies protection, and a capacity to sue and be sued. A contrary doctrine would be repugnant to sound policy, no less than to justice and humanity. The right to sue, in such a case, rests on still broader ground than that of a mere municipal provision, for it has been frequently held that the law of nations is part of the common law. By the law of nations, an alien who comes to reside in a foreign country, is entitled, so long as he conducts himself peaceably, to continue to reside there, under the public protection; and it requires the express will of the sovereign power to order him away. The rigor of the old rules of war no longer exists, as Bynkershoek admits, when wars are carried on with the moderation that the influence of commerce inspires. It may be said of commerce, as Ovid said of the liberal arts: *Emollit mores, nec sinit esse feros. . . .* The case before us does not raise the question, nor do we give any opinion in favor of the right of action by aliens who resided in the enemy's country when war was declared, and when the action was commenced. The cases appear to be against such right. But as to aliens who were residents with us when the war broke out, or who have since come to reside here, by a presumed permission, the authorities seem to be decisive. And whether we consider this case in reference to the decisions of the English courts, to the act of Congress, or to the sense of European nations, declared in their treaties, and by their writers on public law, the plea must be overruled; and the plaintiff is entitled to judgment, upon his demurrer." Accord: Otteridge *v.* Thompson (1814), 2 Cr. C. C. 108.

In Society for the Propagation of the Gospel *v.* Wheeler (1814), 2 Gall. 105, F. C. No. 13,156, it was held that to support a motion in arrest of judgment, it is necessary for the court to negative any presumption that could arise out of a safe conduct or license. The same view is set forth in Bagwell *v.* Babe (1823), 1 Rand. (Va.) 272, per Brooke, J.: "The plea in the case before the court, does not negative nor affirm all the facts that were necessary to bar the plaintiff's action. It does not negative the license of the plaintiff to remain in the country by virtue of the Act of Congress, entitled, An Act respecting Alien Enemies; nor does it affirm, that he had been ordered off by the executive of the United States, in pursuance of that Act. Until such order, the Act gives permission to the alien to remain, though his sovereign be at war with us. The other issues being found for the plaintiff, the judgment is to be affirmed."

During the Crimean War the requirement of a license was adhered to. Alcinous *v.* Nigreu (1854), 4 Ellis & B. 216. During the Civil War, persons adhering to the Union cause living in the South, were allowed to sue up to the time fixed in the Proclamation of the President of the Confederate States requiring alien enemies to leave. Bishop *v.* Jones (1866), 28 Tex. 294.

The English courts have adhered to the requirement of a license during the present war. The leading case is Princess Thurn and Taxis *v.* Moffitt [1915] 1 Ch. 58. In this case the plaintiff was resident in England at the outbreak of the war and had duly registered under the Aliens' Restriction Act, 1914. The decision was approved in Porter *v.* Freudenberg [1915] 1 K. B. 857. Accord: Volkl *v.* Governors of The Rotunda Hospital [1914] 2 I. R. 543; Schulze, Gow & Co. *v.* Bank of Scotland (1914), 2 S. L. T. 455.

The same view obtains in the British Overseas Dominions. Viola *v.* MacKenzie Mann & Co. (1915), 24 Que. K. B. 31; Re Herzfeld (1914), 46

Que. S. C. 281; Ragusz *v.* Commissioners (1916), 26 Que. K. B. 87; Topay *v.* Crow's Nest Pass Coal Co. (1914), 29 West. L. Rep. 555; Prescovitch *v.* Western Canada Flour Mills Co., Ltd. (1914), 24 Man. R. 783; Oskey *v.* City of Kingston (1914), 32 Ont. L. R. 1.

A limitation was attempted in a Manitoba case. "As the Crown has drawn a distinction between peaceable alien enemies and those who may be otherwise engaged, . . . it will be proper to stay the action until the plaintiff satisfies the court that it ought to allow him to proceed to trial and there urge the contention that he is here under what amounts to a license sufficient to enable him to sue on such a cause of action as he is setting up." Hodgins, J. A., in Bassi *v.* Sullivan (1914), 32 Ont. L. R. 14. But this view was criticised in Pescovitch *v.* Western Canada Flour Mills Co., Ltd. (1914), 24 Man. R. 783, per Galt, J.: "I cannot agree with the view expressed by Hodgins, J. A., that the proclamation casts upon resident aliens the burden of establishing that they are not engaged in espionage, etc., before allowing them the protection of the law or in other words compelling them to prove their innocence. I think it is for those who assert such inabilities, in the person affected, to prove them. I see nothing in the War Measures Act, 1914, to justify the limitation which the same learned judge seems disposed to place upon the protection of the law, mentioned in the proclamation namely, that it may well refer only to police protection. There is much force in the plea set up by Shylock, 'You take my life, when you do take the means whereby I live.' I think the proclamation was clearly intended as an assurance to Germans and Austro-Hungarians living in Canada that their rights would be respected, and that they should have the protection of the law, so long as they quietly pursued their ordinary avocations."

"In one sense an enemy subject of a state with which the British Empire is at war is an enemy subject irrespective of whether he is living in British Dominions, in neutral or in hostile territory. For the purposes of ascertaining whether he is entitled to sue in our courts a somewhat different meaning has been given to the term enemy subject both by the courts of Great Britain, and by the King's Proclamation of 12th August, 1914." Stern & Co. *v.* De Waal, South African L. R. [1915] Transvaal, 60.

The same rule obtains under the Indian Civil Procedure Code, section 83. *Semble,* such proclamation must be express. Hussenie *v.* Weichers, Kaiser & Levy, Ltd. (1914), 7 Sind Law Reporter, 329.

The general rule has also been adopted in the United States during the present war. "It seems to me entirely free from doubt that even an alien enemy may still sue in our courts, provided he is a resident here and entitled to the protection which the President's Proclamation extends to him." Per McAvoy, J., in Schultz, Jr., Co. *v.* Raimes & Co. (1917), 99 Misc. (N. Y.) 626, 166 N. Y. Supp. 567. The requirement of registration made by the President's Proclamation of November 19, 1917, does not affect the question, and resident alien enemies coming within the terms of the Proclamation duly registered in conformity therewith, are entitled to sue. Resident alien enemies not affected by the Proclamation are entitled to the same protection, on the assumption of implied license to remain. Arndt-Ober *v.* Metropolitan Opera Co. (N. Y., 1918), N. Y. L. J., Jan. 25, 1918. *A fortiori* subjects of Austria-Hungary resident within the United States are entitled to the protection of the courts. Cp. Proclamation of the President, December 12, 1917. As to the position of persons deported, see views of Chancellor Kent in Bradwell *v.* Weeks (1814), 1 John. Ch. (N. Y.) 206; Dean *v.* Nelson (1869), 10 Wall. 158, 19 L. ed. 926; Lasere *v.* Rochereau (1873), 17 Wall. 437, 21 L. ed. 694.

The court will have regard to the actual not the nominal position of a party as plaintiff or defendant. Thus, in Revenltow-Criminil *v.* Streamstown (Alberta, 1917), 3 West. W. R. 546, the municipality had sold lands belonging to plaintiff, an Austrian subject resident in Austria, for taxes. The agents of the alien enemy filed a caveat in the Land Titles Office to protect the interests of their principal. The municipality being unable to give title to the purchaser, except subject to the caveat, served notice on the plaintiff's solicitors requiring proceedings to be taken to establish the caveat. When the proceedings were instituted the defendant answered by a plea of alien enemy. Blain, M., held that the plea was not admissible, and that the defendant was estopped from asking for an order to dismiss. The proceedings were stayed until the end of the war.

The matter is statutory in Georgia and, *semble*, even a resident alien enemy cannot sue. "The citizens . . . of foreign states at peace with this State . . . shall by comity be allowed the privilege of suing in our courts or giving evidence therein, so long as the same comity is extended in their courts to the citizens of this State." Park's Annotated Code of Georgia, 1914, section 2174. *Quære*, whether a resident alien enemy who is a subject of the German Empire may not be entitled to sue by virtue of the Treaty between the United States and Prussia. See *supra*, p. 38.

Status of interned alien enemies.

The question as to the legal status of interned alien enemies has come before the English courts in several cases arising during the present war.

In King *v.* Superintendent of Vine Street Police Station, Ex parte Liebmann [1916] 1 K. B. 268, the question was whether a person who was a German by birth but who had apparently obtained a certificate of discharge of German nationality and had resided in England, carrying on business there upwards of 20 years, was interned after he had been registered as an alien enemy under the Aliens' Restriction Act, 1914, and the orders made thereunder. Counsel for the applicant sought to distinguish the case from Rex *v.* Schiever, Furly *v.* Newnham, and The Three Spanish Sailors, on the ground that in these cases the men imprisoned were taken in arms fighting against the British troops and were all clearly prisoners of war, but that the applicant had, for many years, been carrying on a legitimate trade in England and was in no sense open to suspicion, and that he was therefore not a prisoner of war, and that those cases did not apply.

Bailhache, J., in concluding that the applicant was an alien enemy and not entitled to the writ considers the question as to whether the applicant can be considered a prisoner of war, says: "I have come to the conclusion that a German subject resident in the United Kingdom, who in the opinion of the Executive Government is a person hostile to the welfare of this country and is on that account interned, may properly be described as a prisoner of war, although not a combatant or a spy. I have gone at such length into this part of the case for several grave reasons. It is, I believe, settled law that no writ of habeas corpus will be granted in the case of a prisoner of war. The cases cited on behalf of the Crown—Rex *v.* Schiever, Furly *v.* Newnham, and The Three Spanish Sailors—are conclusive on the point. If, therefore, Liebmann is in fact a prisoner of war, as I hold he is, his application must fail."

Low, J., after considering the question as to whether the applicant was still a German subject continues: "The second question is, Is he a prisoner of war? The authorities cited by the Solicitor-General—Rex *v.* Schiever, Furly *v.* Newnham, and The Three Spanish Sailors—show, if authority were required, that a writ of habeas corpus cannot be granted on the application of a prisoner of war, even for the purpose of giving evidence, much less in order to obtain his release. We were informed that there are no other authorities and that the question as to what in the circumstances of any particular case constitutes a prisoner of war is one of first impression. Of course in cases of actual combatants, such as in the cases cited above, no question can arise, but, in my opinion, to show that a man is a prisoner of war it is not necessary for him to have been an actual combatant. War at the present moment is not, as it was in olden times, confined to easily ascertained limits. The inventions and discoveries of recent years, and especially the existing means of communication, have so widened the fields of possible hostility that there is scarcely any limit on the earth, in the air, or in the waters which it is possible to put upon the exercise of acts of hostility, and real danger to the realm may therefore exist, although impossible of discovery, at distances far from where the actual clash of arms is taking place. In addition to this, methods of warfare or ancillary to warfare have come into practice on the part of our foes which involve the honeycombing the realm with enemies, not only for the purpose of obtaining and dispatching information, but for purposes directly helpful to the carrying out of enterprises either actually warlike or eminently calculated to assist the successful prosecution of war. . . . This Court is entitled to take judicial cognizance of these matters and, in a question so greatly involving the security of the realm, to say that where the Crown, in the exercise of its undoubted right and duty to guard the safety of all, represents to this Court that it has become necessary to restrain the liberty of an alien enemy within the kingdom, and treat him as a prisoner of war, he must be regarded for the purposes of a writ of habeas corpus as a prisoner of war."

He then continues: "At common law an alien enemy had no rights (see Sylvester's Case), and he could be seized and imprisoned and could have no advantage of the law of England. This position, however, has been softened by custom and by decision of the courts, and the judgment of Sargant, J., in Princess Thurn and Taxis *v.* Moffitt, approved by the Court of Appeal in Porter *v.* Freudenberg, shows that an alien enemy registered under the Aliens Restriction Act, 1914, as this applicant is, is entitled to sue in the King's Courts (which would, I suppose, include such an application as the present) as he is resident here by tacit permission of the Crown, and so is *sub protectione domini regis.* He is therefore in a similar position to an alien enemy resident here under license from the Crown. That license, however, can be terminated at any time by the Crown, and, although this point was not presented to us in the present case, I have little doubt that it might be successfully contended that the notice of internment given by the authority of the Secretary of State is a sufficient revocation of the license. Of course the alien enemy is protected from outrage, because in such case it is not the alien who invokes the aid of justice, but the King in vindication of his peace. Whether his license is revoked or not, I see no reason why it should protect him in the present circumstances from being made a prisoner of war."

In Schaffenius *v.* Goldberg [1916] 1 K. B. 284, a contract had been entered into after the outbreak of the war between Great Britain and Germany, between a British subject resident and carrying on business in England and a German subject also there residing. Subsequently, the German subject was interned as an alien enemy, and the question presented to the court was whether he was entitled to sue in respect of this contract. In the Divisional Court, Younger, J., said:

"I am of opinion that he is at liberty to maintain the action free from any disability attributable to his enemy character. I arrive at this conclusion upon the short ground that the defendant being, as I hold, entitled under the Proclamation to enter into the agreement with the plaintiff, and no change having since taking place in the plaintiff's condition affecting the propriety of the defendant entering into an identical agreement with him even now, the plaintiff must be entitled to enforce in these courts any rights which the agreement gives him. The plaintiff has never been, and is not now, an enemy within the meaning of any Proclamation relating to trading with the enemy. No embargo has ever been placed upon the defendant or any other British subject entering with the plaintiff into any transaction otherwise lawful. The internment of the plaintiff has in no way affected any right which the defendant otherwise had to contract with the plaintiff, although it may have restricted his opportunities for so doing. Internment has not made the plaintiff an enemy. Enemy character in a trading sense has never attached to him. The views on these points set up on behalf of the defendant before action commenced cannot, I think, be supported. But I know it has been suggested that while the Proclamation may, under certain conditions of residence, authorize, in the sense that it does not prohibit, transactions with a person who may be an enemy alien born, still it has not the effect of rendering the King's Courts accessible to such an alien for the purpose of enforcing such transactions unless he can on some other ground claim the right to sue, and I am aware that that view has been taken by a sheriff court in Scotland, that it has been supported by at least one text-writer of eminence here, and, as applied to enemy aliens resident and carrying on business in Germany but with a branch here, that the right of these enemies in the full sense to sue during the continuance of the war in respect of a transaction with that branch since its commencement has been expressly left by the Court of Appeal to be decided when the case arises. But no Court of Appeal or of co-ordinate jurisdiction has, so far as I am aware, ever held that an enemy alien not resident in enemy territory is prevented from enforcing in these Courts any claim competent to him in respect of a transaction since the war not prohibited by the Proclamation, and it would in my judgment be not only subversive of principle so to hold, but it would be contrary to such authority as there is to be found on the subject. . . . And if an enemy alien resident in a neutral country can maintain such an action in these Courts it would appear *a fortiori* that if resident, and even more if interned here, he can equally maintain it. For it must always be remembered when dealing with this subject that it is not the nationality of the plaintiff but his place of business during war that is important.

It is when he is resident in hostile territory that payment of money to him is, in the view of the Court, to the advantage of the enemy. In a case like the present, where the plaintiff is effectually prevented from leaving this country, there is no reason of state or public policy why the principle just alluded to should not be given full effect. . . . There has been a gradual and progressive modification in the rules of the old law in their restraint and discouragement of aliens. It is, as I have already indicated, not the nationality, but the residence and business domicil of the plaintiff that are now all-important. If these are in enemy country a plaintiff may not sue, whatever his nationality, even if he be a friend. If these are in friendly or neutral territory he may sue, even if he be an enemy born. *Prima facie* all persons resident in this country are entitled to have access to the Courts, and, although it may still be that an alien enemy plaintiff resident here must also show that he is here with the licence, actual or implied, of the King, still even so, as has been held by Sargant, J., in Princess Thurn and Taxis *v.* Moffitt, the registration which the plaintiff has effected is sufficient evidence of such a license. And it may be that the expression 'being in protection' means little more than the consequence to the plaintiff of his being licensed to remain. If, however, it does mean more, then it has been expressly decided that a prisoner of war is here under the protection of the King (Sparenburgh *v.* Bannatyne), so that the plaintiff's position appears to be complete."

Speaking of the opinion in the case of Rex *v.* Superintendent, he says: "Now it is true that in a very real sense the plaintiff is a prisoner of war: see Rex *v.* Superintendent of Vine Street Police Station, Ex parte Liebmann; but it would indeed be strange if that circumstance, without more, were to have the extraordinary effect upon his rights which is attributed to it. It is common knowledge amongst us that the internment of a civilian alien enemy does not necessarily connote any overt hostile attitude on his part. Many such aliens have been interned at their own request and for their own protection; many others profess the strongest desire to become and many more have applied to be naturalized British subjects. And these professions may be, and in very many cases they doubtless are, quite sincere; the only justification in such cases for internment is that the State cannot take the risk that they are not. But what is perfectly certain is that there is no necessary line of demarcation between the attitude towards this country of an alien who has been interned as contrasted with one who has not; and yet only the interned are prisoners of war. Unless, therefore, some authority can be produced to show that internment by itself makes an alien *exlex*, nothing can, as it seems to me, be made of this defence. I have not to consider whether the defence might apply to the case of one taken prisoner on the field of battle or to any actual combatant. It is, however, I think certain that it cannot, without more, apply to a civilian interned as a mere measure of police—a proceeding connoting no proof of hostile act or intent. On principle, therefore, I see no reason why the right of suit which on the authority of Princess Thurn and Taxis *v.* Moffitt, approved by the Court of Appeal in Porter *v.* Freudenberg, the plaintiff possessed immediately before his internment has been taken away by that event."

The case was appealed to the Court of Appeals where Lord Cozens-Hardy, M. R., adopted the view and the reasoning of the Divisional Court. Discussing the case of Porter *v.* Freudenberg [1915] 1 K. B. 857, the Master of Rolls says: "I think one must be very careful in deciding the case neither expressly nor by reasonable implication to say anything inconsistent with the judgment of the full Court of Appeal in the case of Porter *v.* Freudenberg delivered by Lord Reading, but delivered by him after the most elaborate discussion with all the other members of the Court What did that case decide? It decided that for the purpose of trading it is not a person's nationality that determines whether he is an 'alien enemy.' That is not the test. It decided also, approving Sargant, J.'s judgment in Princess Thurn and Taxis *v.* Moffitt, that registration operated as a license by the Crown to the registered person to remain commorant here. It did not decide, nor could the Court have reasonably been asked to decide, that such a license could not be revoked by the Crown. But there is no circumstance here which can be suggested for one moment as affording evidence of revocation unless it be the internment which took place in July of this year. We have been taken back to a number of authorities, most of which were referred to and discussed in Porter *v.* Freudenberg, the case heard before the full Court of Appeal. I do not intend to go back on anything that was said there, but there is one point at least in this case which may be taken to be a new point, and it is this. It is said that though it is true that registration has the effect of a permission from the Crown to remain in this country, a permission only lasts so long as the licensee does not molest the Crown and is not molested by it; and it is further said that the plaintiff is plainly molested by being kept in confinement in the Isle of Man under the internment order. I think there is absolutely no authority for that proposition. One authority relied upon was the case of Wells *v.* Williams, and reliance was placed on one passage only. The judge presiding in the Court said this: 'Though the plaintiff came here since the war, yet if he has continued here by the King's leave and protection ever since without molesting the Government or being molested by it, he may be allowed to sue, for that is consequent on his being in protection.' What is the meaning of those words 'being molested by the Crown'? I think they mean only this that if it be shown that, although the license was given by the Crown, that license was subsequently withdrawn by the Crown, that is a molestation, which would prevent, or might prevent, the plaintiff from suing. I do not rely solely upon that construction of these words, because the case is reported more than once. In the report in Salkeld the words which I have read about molesting the Government, or being molested by the Government, are not to be found. The judgment is very short, and I will read the material portion of it: 'If an alien enemy comes hither *sub salvo conductu*, he may maintain an action: if an alien enemy comes hither in time of peace, *per licentiam domini regis*, as the French Protestants did, and lives here *sub protectione*, and a war afterwards begins between the two nations, he may maintain an action; for suing is but a consequential right of protection.' That judgment seems to me to put the case of Wells *v.* Williams on a perfectly satisfactory foundation, and I entirely decline to assume that such an important proposition as the appellant here relies upon can be established upon a single sentence in a short judgment in Lord Raymond's reports. The observation in question seems to me to be wholly irrelevant, and, if I may respectfully say so, either it must be wrong, or else 'molesting' refers to the revocation by the Crown under its prerogative of the license to remain in this country."

Bankes, L. J., said: "As a prisoner of war his position upon the authorities is quite clear. He is in no worse position than any other individual who is in custody for an offence. Therefore, in whatever way his position is considered, he is entitled, upon the authorities, to maintain an action. But it is said that there is authority for the proposition that a person who, to use the language of the appellant's counsel, is either molesting the Government or being molested by the Government is in some position different from that of an alien enemy such as this man was or a prisoner of war. In my view there is no authority for that proposition at all."

Warrington, L. J., said: "On July 1, 1915, he was interned—that is to say, the King, in the exercise of his right and duty in defence of the realm, thought it desirable for that purpose that this person should no longer be at large. It is said that from that moment so long as he remains interned he loses all his civil rights. . . . The authorities that have been cited to us with regard to prisoners of war in old times only go to this, that the prisoner of war could not sue out a writ of habeas corpus. Of course nobody now disputes that. There is no case which goes so far as the proposition contended for by the defendant in the present case, and in my judgment Sparenburgh *v.* Bannatyne is a distinct authority to the contrary."

In Nordman *v.* Rayner (1916), 33 T. L. R. 87, plaintiff, a German, had entered into a contract by which he became London agent of defendant. In September, 1914, he was interned, but soon thereafter released. Held, that the contract was not dissolved by war, nor its basis destroyed by outbreak of war or by temporary internment, and plaintiff therefore was entitled to recover. The internment was not due to any moral default of the plaintiff and could not be held to have operated to destroy his civil rights.

The question has also come before the courts of the British Overseas Dominions. In Harasymczuk *v.* Montreal Light, Heat & Power Co. (1916), 25 Que. K. B. 252, it was held that an alien enemy interned because likely to become a public charge was entitled to sue. But if the internment was for reasons of public safety, and as a military prisoner there is no right to sue. Gusetu *v.* Dame Laing (1915), 48 Que. S. C. 427.

The South African courts at first denied the right of an interned alien enemy to sue. Juta, J. P., in Labuschagne *v.* Maarburger, South African L. R. [1915] Cape, 423, says: "The whole foundation of the right of an enemy's subject to sue in the King's Court during war is the leave and license of the Crown, or as is said, by tacit permission of the King; but for that leave and license the right of action would be suspended until the end of the war. The right, therefore, must be coextensive with such leave and license—if the latter cease then the right to sue must cease. When, therefore, the plaintiff was interned by order of the Executive in the Union, as a prisoner of war, it seems to me that the tacit leave and license ended. The presumption which arose from the plaintiff being allowed to remain here after the declaration of war could not continue to exist. If at the declaration of war the plaintiff had been interned no such presumption of leave and license could have arisen. So upon the internment in November all presumption of leave and license ceased; the leave and license or tacit permission was clearly at an end." The doctrine of this case was, however, subsequently limited, and the rule is now in conformity with the views of the English courts. Malcomess *v.* Kuhn, South African L. R. [1915] Cape, 852.

Status of prisoners of war.

In Maria *v.* Hall (1807), 1 Taunt. 32, it was argued, referring to the case of The Three Spanish Sailors, that as the right of habeas corpus was only a summary method of obtaining a remedy which might otherwise be had by an action of trespass, and that if a prisoner of war cannot maintain trespass, there is no reason why he should be able to maintain any other action.

While it is settled law that a prisoner of war may not sue for habeas corpus, Rex *v.* Schiever (1759), 2 Burr. 765; The Three Spanish Sailors (1779), 2 W. Bl. 1324; Furly *v.* Newnham (1780), 2 Doug. 419, a prisoner of war has capacity to contract, and may sue in respect of ordinary transactions. But a prisoner of war may be an enemy under the Act by reason of his official character.

Sparenburgh *v.* Bannatyne (1797), 1 Bos. & P. 163, involved the question whether a neutral taken in an act of hostility on board an enemy vessel and detained as a prisoner was entitled to sue. Eyre, C. J., held that he was. "A neutral, whether in or out of prison, cannot, for that reason, be an alien enemy; he can be an alien enemy only with respect to what he is doing under a local or temporary allegiance to a power at war with us. When the allegiance determines, the character determines. He can have no fixed character of alien enemy who owes no fixed allegiance to our enemy, and has ceased to be in hostility against us, it being only in respect of his being in a state of actual hostility that he was even for a time an enemy at all. As a prisoner of war how does he differ from any other individual who is in custody for an offense which he has committed, and for which he is answerable?"

Heath, J., said: "Next, as to the general question, the pleas state that the plaintiff was adhering to the King's enemies; they must be proved in all their parts; but a prisoner at war is not adhering to the King's enemies, for he is here under protection from the King. If he conspires against the life of the King, it is high treason; (Peter Moliereo, a French prisoner, was indicted for privately stealing in a jeweller's shop. Sir Michael Foster thought it improper to proceed capitally against him upon a local statute, and directed the jury to acquit him of privately stealing, but to find him guilty of simple larceny, Fost. 188); if he is killed it is murder; he does not therefore stand in the same situation as when in a state of actual hostility. It has been said that a prisoner at war cannot contract; his case would be hard, indeed, if that were true. Officers on their parole must subsist like other men of their own rank; but, according to such doctrine, they must starve, for they could gain no credit if deprived of the power of suing for their own debts. It has also been urged that if the plaintiff was under a protection, that circumstance ought to have been pleaded, and this is true of a formal protection under the great seal; but there may be a protection arising from situation which need not be pleaded. If a prisoner of war is in confinement, he is protected as to his person; if he is on his parole, he requires further protection than what relates merely to his person. . . . I will add one case to show that a prisoner at war may sue and be sued. The son of the celebrated Mississippi Law was brought over here as a prisoner at war, and being on his parole was arrested for £10,000 by the executor of a creditor, who swore that he was indebted as appeared by the testator's books; he was discharged, however, not because he was a prisoner at war, but because the executor had not inserted in his affidavit that he was indebted 'as he believed.' If a prisoner of war can be sued, there is no reason why he should not sue. How is it with felons? They may be charged in execution, and yet their bodies are at the King's disposal. For these reasons I think the plaintiff, being a prisoner at war at the time of making the contract, may maintain an action on that contract, and is protected by law."

Rooke, J., said: "An enemy under the King's protection may sue and be sued; that cannot be doubted. A prisoner at war is, to certain purposes, under the King's protection, and there are many cases where he can maintain an action. I will suppose that an officer of high rank on his parole is possessed of a ring or a jewel of great value, on which he wants to raise money, and that a tradesman is so dishonest as to receive it from him and refuse either to advance the money or return the pledge. Surely the Court would say that he might recover his ring or his jewel from the tradesman. The present plaintiff has in fact done much the same thing. Under the license of the King's officer he pledged his labour at Saint Helena, in order to procure a more comfortable subsistence. Accordingly he worked his way over, and earned a reasonable compensation. That being the case, I see no reason why he should not recover, even if he were alien enemy born. But as my lord has not thought proper to go so far, I speak to that point with diffidence, and shall rather avail myself of the distinction which has been drawn between the temporary and permanent character of alien enemy; laying in a claim, however, to say at any future day that a person in the situation of the plaintiff is like the officer who pledges his jewel; for this contract was made under the license of those who had authority to license the contracting party."

Pleading and practice.

A court may take judicial notice of the fact of enemy alienage, where this is apparent from the records. Janson *v.* Driefontein Consolidated Mines [1902] A. C. 484, per Lord Davey; Society for the Propagation of the Gospel *v.* Wheeler (1814), 2 Gall. 105, F. C. No. 13,156; Mumford *v.* Mumford (1812), 1 Gall. 366, F. C. No. 9918; Owens *v.* Hanney (1815), 9 Cr. 180, 3 L. ed. 697. In other cases it must be specially pleaded. "As the defense is merely technical and dilatory, growing out of a supposed temporary disability, it must to be effectual, be pleaded specially and with certainty to a particular intent." Burnside *v.* Matthews (1873), 54 N. Y. 78; McNair *v.* Foler (1875), 21 Minn. 175; Flindt *v.* Waters (1812), 15 East, 260.

Where the defense of enemy alienage is set up, it must be done by answer, and the issues thereby raised should be tried as other issues, and not be disposed of summarily on affidavits. Rothbarth *v.* Herzfeld (1917), 100 Misc. (N. Y.) 470.

The defense of alien enemy is by no means favored in the law, and some cases have gone a great way in discountenancing it. It has been called an "odious plea." Lord Kenyon, C. J., in Casseres *v.* Bell (1799), 8 T. R. 166. The defendant must therefore state everything that can oust the plaintiff of his right of suing. Derrier *v.* Arnaud (1687), 4 Mod. 405; Openheimer *v.* Levi (1685), 2 Str. 1082; Wells *v.* Williams (1698), 1 Salk. 45, 1 Ld. Raym. 282, Lutw. 34. All of these cases and others, are commented upon by Story, J., in Society for the Propagation of the Gospel *v.* Wheeler (1814), 2 Gall. 105, F. C. No. 13,156.

"A defense of this sort, which goes merely in disability of the person is to be made out by the strictest proof." Per Lord Ellenborough, in Harman *v.* Kingston (1811), 3 Camp. 150. This is especially the case where the plaintiff is an enemy only by virtue of the provisions of a statute such as the Act of Congress and the British Acts and Proclamations relating to trading with the enemy, by reason of doing business in an enemy country, though he is personally a subject of and resident within a neutral country. See *supra*, p. 59. But a statement from the President to the effect that there is reasonable ground to believe that plaintiff is an enemy shifts the burden of proof. See *infra*, p. 230. A mere suspicion of enemy alienage is not enough. White *v.* T. Eaton Co. (1916), 30 Dom. L. R. 459.

But if the issue of enemy alienage is not successfully raised, the action does not abate, and may be continued after the war. Hammersley *v.* Lambert (1817), 2 John. (N.Y.) 508. It has been held, that if an action instituted before war by a person who becomes an alien enemy, is prosecuted to judgment during the war, such judgment may be reviewed, as the court was without authority to proceed. Brooke *v.* Filer (1871), 35 Ind. 402. This decision is, however, explainable on the ground that the authority of the agent to bring the suit was either determined or suspended during the war. In Stephens *v.* Brown (1884), 24 W. Va. 234, it was said per Johnson, P.: "Where litigants are properly in court before the war commences, and the parties or some of them are on opposite sides of the military lines, as soon as flagrant war exists in such case, the proceedings in the suit or action must instantly cease. No further step can be legally taken, as long as this state of things exists. It is just as necessary to the due administration of justice, that each litigant should be free to attend the court at every step taken in the progress of the suit, whether in the inferior or in the appellate court, as it is that process should be served upon a defendant to bring him into court in the first instance." But in both of these cases it was the alien enemy who was held entitled to re-open the case under the special circumstances. A defendant who fails to raise the issue affirms the ability of the plaintiff to proceed to judgment. Society for the Propagation of the Gospel *v.* Wheeler (1814), 2 Gall. 105, F. C. No. 13,156.

If the plea of enemy alienage is successfully raised in regard to an action instituted after the outbreak of the war in case of a plaintiff who is an alien enemy, at common law, or in case of an ally of enemy or other persons who become affected with hostile character under the Act or under any Proclamation of the President made under the powers conferred by the Act, the action should be dismissed with costs. Elgee *v.* Lovell (1865), Woolworth, 102 F. C. No. 4344.

But where the action was properly instituted, the proper proceeding is to stay proceedings during the war, without costs. It was said in Levine *v.* Taylor (1815), 12 Mass. 8, per Jackson, J.: "Possibly, a plea of alien enemy in bar might be good in this country, with respect to the subjects of any nation with which we have no provision to the contrary by treaty; although, since 'commerce has taught the world more humanity, and has mollified the too rigorous rules of the old law,' and as private debts are not now in fact confiscated by civilized nations in the event of war between them, it may well be doubted if such a plea can ever be good, the reason or ground of it having entirely failed."

In Howes *v.* Chester (1861), 33 Ga. 89, Lumpkin, J., says: "This is a case at the instance of the citizens of New York, against the citizens of this State. The plaintiffs were not alien enemies at the time of the institution of suit, and have become alien enemies since. What disposition shall be made of the action? Shall it be dismissed or continued on the docket? The authorities are scant and confused upon the question. Precedents, cited from Massachusetts, seem to hold that a continuance is the proper practice, though they maintain that some process has to be sued out and served on the defendant, by way of renewing the action at the termination of hostilities. This, we apprehend, would require legislation in Georgia. The English authorities are equally unsatisfactory. All maintain, however, that the proper plea to be filed in such cases, is a plea of *puis darrien continuance*, to the disability of the plaintiff. In other words, a plea in abatement; and that the effect of the plea is to suspend, not to bar the plaintiff's remedy. We ask, if this plea is sustained, does it not carry the case out of Court? Take any of the analogies of the law; for instance, a suit by a *feme sole*, who, during the pendency of the action, marries. If the husband refuse to join in the suit, and being an alien enemy, does not the action, however properly brought in the beginning, abate—that is, go out of Court. Upon the whole, we think that, upon authority and principle, the judgment of the Court below dismissing the writ, was right. It is for the Legislature to direct what disposition shall be made of this and similar cases, as well as to provide for the payment of the costs, if they see fit."

But the United States District Court for the district including Georgia has expressly repudiated this view in a recent case, Plettenberg, Holthaus & Co. *v.* Kalmon & Co. (1917), 241 Fed. 605, where Speer, D. J., says: "The action, instituted before hostilities began, was properly brought. It may be maintained, but to the extent only that it does not contribute strength to enemies of our country. The only case in conflict with this view, cited by the learned counsel for the defendant, is Howes, Hyatt & Co. *v.* Chester & Co., 33 Ga. page 89. There a suit, begun by a resident of New York before hostilities between the United States and the Confederate States, was by the Supreme Court of Georgia ordered to be dismissed. Since, however, it turned out in the end that no alien enemy was before the court (Texas *v.* White, 7 Wall. 700, 19 L. Ed. 227), the opinion must be regarded as academic, or at least, notwithstanding the great authority of the court pronouncing it, not controlling in a court of the United States. Besides, it seems in conflict with Owens *v.* Hanney, 9 Cranch, 179, 3 L. Ed. 697. That, too, was a case from this state. The action had been brought by a British subject against a citizen of the United States, and judgment obtained in 1811. An appeal was taken, and war was declared with Great Britain on June 18, 1812, and continued at the time the case was argued in the Supreme Court. It appears from the report that counsel for the American litigant argued that the plaintiff was an alien enemy, and for that reason the court ought not to affirm the judgment against a citizen of the United States. It was affirmed, however, through Chief Justice Marshall. True, the Chief Justice said nothing on the precise point here involved. It may not, however, be doubted that it was considered by the illustrious jurist, who had been the associate of Patrick Henry in the memorable trial, Ware *v.* Hylton, 3 Dall. 199, 1 L. ed. 568, in which they jointly sought to defeat enforcement of the British debts."

In New York it seems that enemy alienage could formerly be pleaded in bar or in abatement of personal actions. In Bell *v.* Chapman (1813), 10 John. (N. Y.) 183, the Court says: "The plea *puis darrien continuance* avers that the plaintiff was, at the commencement of the suit, and still is, commorant in Ireland; and that since the last adjournment he has become an alien enemy, being an alien, born within the allegiance of the King of Great Britain, with whom we are at war, and the plea concludes in bar of the action. There is no doubt that the plea is a valid one in the case of the alien's residence in the enemy's country, and the plea may be pleaded either in abatement or in bar, for the precedents are both ways. (Rast. Ent. tit. Ejectment, 7 tit. Trespass per Alien, 1 Cornw. Tab. tit. Abatement, 7 tit. Bar in Divers Actions, 87; Wells *v.* Williams, 1 Lutw. 34, 35; West *v.* Sutton, 1 Salk. 2.) This plea conforms precisely to the opinion of the K. B. in Le Bret *v.* Papillon (4 East, 502), in concluding in bar of the further maintenance of the suit. As the disability of the plaintiff is but temporary in its nature (for a state of perpetual war is not to be presumed), the good sense and logic of pleading would seem to be in favor of the plea concluding in abatement, when the cause of action is not void or extinguished. But whether the plea be in the one form or the other is, perhaps, not material, for the judgment thereon would not be a bar to a new action on the return of peace. A judgment is no bar to a new suit, unless it involves the merits of the controversy, or be founded on matter which affords a permanent avoidance, or discharge. But the present plea only bars the plaintiff, in his character of alien enemy commorant abroad, from prosecuting the suit. It does not so much as touch the merits of the action. In a late case in chancery (Ex parte Boussmaker, 13 Ves. 71), Lord Erskine declared that the alien's right of action, in such a case, was only suspended by the war, and that if the contract was originally good, the remedy would revive on the return of peace. This was even the ancient doctrine, according to Lord Coke, who said (Co. Litt. 129 b) that 'true it is an alien enemy shall maintain neither real nor personal action, *donec terræ fuerint communes*, that is, until both nations be in peace.'" See also Jackson *v.* Decker (1814), 11 John. (N. Y.) 418. That the rights of action are suspended was held in Sanderson *v.* Morgan (1863), 25 How. Pr. (N. Y.) 144, affirmed (1868), 39 N. Y. 231; Stumpf *v.* A. Schreiber Brewing Co. (1917), 242 Fed. 80; Speidel *v.* N. Barstow Co. (1917), 243 Fed. 621; Taylor *v.* Albion Lumber Co. (Cal. 1917), 168 Pac. 348.

To the same effect: Harman *v.* Kingston (1811), 3 Camp. 150; Flindt *v.* Waters (1812), 15 East, 260; Ex parte Boussmaker (1806), 13 Ves. 71; Actiengesellshaft für Anilin Fabrikation & Mersey Chemical Works, Ltd., *v.* Levinstein (1915), 31 T. L. R. 225; Candilis & Sons *v.* Victor & Co. (1916), 33 T. L. R. 20, cp. Le Bret *v.* Papillon (1804), 4 East, 502; Elgee *v.* Lovell (1865), Woolworth, 102, F. C. No. 4344; Currie *v.* The Josiah Harthorn (1862), F. C. No. 3491 a; Stephens *v.* Brown (1884), 24 W. Va. 234.

Where a suit was begun before the war, and an order to provide security for costs was made, an application for extension of time and for a stay of proceedings in order to avoid dismissal for failure to give security was denied, and the suit dismissed. Dumenko *v.* Swift Canadian Co., Ltd. (1914), 32 Ont. L. R. 87; Whelan *v.* Cook (1868), 29 Md. 1. But where security had been paid in before the war, the Ontario court distinguishing the Dumenko case, in Luczycki *v.* Spanish River Pulp Co. (1915), 34 Ont. L. R. 549, per Boyd, C., says: "A very clear line of division is to be marked as to cases where the alien plaintiff is rightly in court and has a vested right of action as an alien friend before that character has been transformed by war to that of an alien enemy. . . . In the Dumenko case, the judgment may well be rested on the fact that the plaintiff was in default in giving security for costs. By the order, if security was not given the action was to be dismissed. The plaintiff, the alien enemy, moved to obtain an extension of time, which favor will not be granted to an alien enemy, and the action was well dismissed with costs. . . . A distinctive point in the case in hand is that security for costs had been paid into court. . . . To dismiss the action with costs would enable the defendants to lay hands on this money in court, and so to penalize the plaintiff for no fault of her own, and giving an advantage to the defendants not earned by them. I would adopt an observation of Williams, J., in an alien case, Shepeler *v.* Durant (1854), 14 C. B. 582, 583, and say that so to deal with this fund in court would be 'manifestly contrary to justice and good faith.'"

Where plaintiffs become alien enemies after verdict, the court will not stay judgment and execution. Vanbrynen *v.* Wilson (1808), 9 East, 321; West *v.* Sutton (1693), 2 Ld. Raym. 853; Buckley *v.* Lyttle (1813), 10 John. (N. Y.) 117; Brofield *v.* Lynd (1812), 2 Mart. (O. S.) (La.) 213.

It was held in Shepeler *v.* Durant (1854), 14 C. B. 582, that where after declaration had been delivered and an order to plead obtained before the war, the proceedings should not be stayed or a plea in abatement admitted. This case is cited with approval in 2 Oppenheim, International Law (2d ed.), 133, but it has been said of this case that "no authorities whatever are cited in the report, and it is submitted that the case turns purely on an obsolete rule of pleading and is of no authority at the present day." McNair, in 31 Law Quarterly Review, 161. Cp. Alcinous *v.* Nigreu (1854), 4 Ellis & B. 216. In Von Hellfeld *v.* Rechnitzer (1914), Times, December 11, 1914, cited by McNair, in 31 Law Quarterly Review, 161, it was held that even if pleadings were closed before the war, the plaintiff should not be allowed to proceed. *Semble*, if it appear by the record that the plaintiff, after the rendition of the judgment below and before affirmance on writ of error, becomes an alien enemy, the judgment may nevertheless be affirmed. Owens *v.* Hanney (1815), 9 Cr. 180, 3 L. ed. 397. The plea of alien enemy is not available after judgment and in a collateral proceeding. Merrick's Estate (1842), 5 W. & S. (Pa.) 9. If execution has been enjoined by defendants, the court will not hear an application from plaintiffs who have since become alien enemies to dissolve the injunction. Taylor *v.* Morgan (1812), 2 Mart. (O. S.) (La.) 263.

Waiver of defense of enemy alienage.

The question whether the defense of enemy alienage can be waived where the enemy character of the plaintiff appears from the record is not settled. In Janson *v.* Driefontein Consolidated Mines [1902] A. C. 484, the litigants had stipulated that the defense should not be raised and "that the action should be treated as if brought at the conclusion of the war." But cp. Lord Davey's opinion in the same case; see also Netherlands South African Railway Co. *v.* Fisher (1901), 18 T. L. R. 116. In Mumford *v.* Mumford (1812), 1 Gall. 366, F. C. No. 9918, "there was a bill in equity, upon the face of which it appeared, that the complainant was an alien enemy. It was admitted by the counsel on each side, that the fact was truly stated, and thereupon the Court ordered the bill to be dismissed, being of opinion that an alien enemy has no *persona standi in judicio*, and cannot prosecute any suit." A stipulation such as was made in the Janson case would now be prohibited under section 3 of the Act as being the entering into or performance of an agreement for the benefit of an enemy. But a mere failure to set up the defense, if not done in pursuance of agreement, is not a violation of the Act, even though the defendant knows that the plaintiff is an enemy.

Suits by and against representatives. Enemy Co-plaintiffs.

It was held in Daubuz *v.* Morshead (1815), 6 Taunt. 332, that a trustee can sue in trust for an alien enemy. But this decision is explainable on the ground that the contract sued upon was an exception (see this case, *supra*, p. 113) and the decision is, therefore, within the principle of Kensington *v.* Inglis (1807), 8 East, 273; Cornu *v.* Blackburne (1781), Doug. 641, note; Crawford *v.* The William Penn (1815), 1 Peters C. C. 106, F. C. No. 3372.

The proper rule is laid down in Brandon *v.* Nesbitt (1794), 6 T. R. 23, holding that a suit by a resident agent of a non-resident alien enemy is not sustainable, even where it appears that the principal is indebted to the agent for an amount in excess of the claim, and that, therefore, the money will not be sent out of the country to strengthen the enemy.

The same rule applies to actions brought by a partnership where one of the partners is an alien enemy. In Candilis & Sons *v.* Victor & Co. (1916), 33 T. L. R. 20, the plaintiffs, a Manchester firm consisting of three partners, of whom two were Turkish subjects resident in Turkey and one was a British resident in Manchester, brought an action during the present war with Turkey for the detention and conversion of certain cloths or for breach of contract. On an interlocutory application by the defendants to have the action stayed on the ground that two of the partners were alien enemies, it was held, that the defendants were entitled to an interlocutory order for a stay of all further proceedings in the action.

But where suit was instituted by a partnership, one of the partners in which was an alien enemy, and judgment obtained by default, the defendant cannot bring proceedings to set aside the judgment. Bankes, L. J., in the Court of Appeal, said that to give effect to the defendant's contention would be to condemn all British subjects who had the misfortune at the outbreak of the war to have an alien enemy partner to stand out of all moneys due to the firm at that date for an indefinite time, even though the alien enemy's share of those debts was small, and there was no fear that he would during the war be able to handle or derive any immediate benefit from it. Speyer Brothers *v.* Rodriguez (1917), 143 L. T. 41.

Where such a partnership has been dissolved, and a resident partner appointed receiver, the receiver may maintain actions on claims due to the old firm. Cp. Rombach *v.* Gent (1915), 31 T. L. R. 492.

Suits cannot be maintained by an administrator or executor acting under the statutory powers conferred by enactments such as the Lord Campbell Acts, on behalf of non-resident alien enemy relatives of the deceased. Dangler *v.* Hollinger Gold Mines, Ltd. (1915), 34 Ont. L. R. 78.

But it has been held that the resident executor of the estate of an alien subject who died in the enemy country of his birth, but domiciled in South Africa, was entitled to sue on claims due the estate. Malcomess *v.* Kuhn, South African L. R. [1915] Cape, 852. See also Dangler *v.* Hollinger Gold Mines, Ltd. (1915), 34 Ont. L. R. 78.

It is, however, the enemy character of the principal that prevents the suit. *Semble*, therefore, that an alien enemy may sue in a representative capacity for a principal not under the disability of enemy alienage. Villa *v.* Dimock (1692), Skinner, 370. This view is not adopted in In re Sichel's Settlements [1916] 1 Ch. 358, where it was held that an alien enemy cannot act as trustee, as he is unable to sue.

A suit cannot be instituted by two persons, one of whom is an alien enemy. Actien-Gesellschaft für Anilin-Fabrikation and Mersey Chemical Works, Ltd., *v.* Levinstein (1915), 31 T. L. R. 225. A contrary view is announced in Posselt *v.* D'Espard (N. J., 1917), 100 Atl. 893, more fully discussed, *supra*, p. 194. But the fact that one of the plaintiffs, who is a mere nominal party to the suit, is an alien enemy, is not sufficient ground for dismissing the petition of the only beneficial plaintiff, who is not an enemy. Hoskins *v.* Gentry (1866), 2 Duv. (Ky.) 285.

In Mercedes Daimler Motor Co., Ltd., *v.* Mandsley Motor Co. (1915), 31 T. L. R. 178, an action had been brought prior to the war by the Mercedes Daimler Motor Co. Ltd., an English company, and the Daimler Motoren Gesellschaft, a German company, for alleged infringement of a patent of which they were the registered owners. The deed for the patent provided that "the British company shall have the sole right of bringing actions or other proceedings to restrain the infringement of or otherwise protecting the rights granted by all or any of the letters patent . . . and for such purpose may upon first giving to the German company twenty-one days' notice of its intention so to do join the German company as co-plaintiffs with the British company in any such proceedings, and the British company shall have the sole conduct and control of any such actions." Objection was taken that one of the plaintiffs was an alien enemy, a German company, and that the action ought to be suspended. It was held that the objection was not well founded. Although the patent was in the names of the two companies, the person to protect the patent was the English company. To deny the English company the right to prosecute this action would be to deny the right to a British subject to bring an action for his own protection.

" Enemy . . . licensed to do business . . . may prosecute . . . so long as such license remains in full force and effect.

An enemy or ally of enemy licensed under section 4 (a) has a limited right to appear as plaintiff. But the cause of action must have arisen "solely out of the business transacted within the United States under such license." Under the English Proclamation of September 9, 1914, the right does not extend to transactions entered into with such branch prior to the war. W. Wolf & Sons *v.* Carr, Parker & Co., Ltd. (1915), 31 T. L. R. 407. The Act contains no such limitation.

In regard to business transacted prior to the obtaining of a license, the position of these persons is not affected by the Act, and the rules set forth above regarding enemy plaintiffs apply. The right to bring suit by virtue of the license is in effect only so long as such license remains unrevoked.

" Enemy or ally of enemy may defend."

The Act assumes that an enemy may be sued. Until the present war, there appears to be no direct authority in the reported English cases that an alien enemy can be sued. Albretcht *v.* Sussman (1813), 2 Ves. & B. 323, was a bill both for discovery and for relief by an alien enemy, and not merely for discovery as ancillary to a suit at law. At common law personal summons on judgment of outlawry was necessary in order to found jurisdiction, which may account for the absence of such reported cases. Cp. Maury in 14 Am. L. Reg. (N. S.) 129; Hewitson *v.* Fabre (1888), 21 K. B. 6. It is now, however, settled in England, that an alien enemy may be sued. Porter *v.* Freudenberg [1915] 1 K. B. 857; Robinson & Co. *v.* Continental Insurance Co. of Mannheim [1915] 1 K. B. 155; Halsey *v.* Lowenfeld [1916] 1 K. B. 143. A similar rule applies in the British Overseas Dominions. Rydstrom *v.* Krom (British Columbia, 1915), 31 West. L. R. 7; Hussenie *v.* Weichers, Kaiser & Levy, Ltd. (India, 1914), 7 Sind Law Reporter, 329. By an Act of Parliament (5 Geo. 5, c. 36) of 1915, provision is made for service outside the jurisdiction, but the Act has a very limited application.

In the United States the rule has been laid down unqualifiedly that an alien enemy may be sued. McVeigh *v.* United States (1870), 11 Wall. 259, 20 L. ed. 80; Masterson *v.* Howard (1873), 18 Wall. 99, 21 L. ed. 764; and see cases cited in 30 Am. & Eng. Enc. (2d ed.) 10, note 2, and in 40 Cyc. 328, note 22. And it has been held that the present Act was not intended to prevent residents from prosecuting actions against nonresident alien enemies. Stein *v.* Geisch & Company, N. Y. Supreme Court, Special Term, Part I, New York Law Journal, December 5, 1917.

Proceedings may be brought both as to causes of action that arose prior to the war as well as those arising subsequently. "Mr. Heber Hart has argued, with reference to the liability of an alien enemy to be sued, that a distinction is to be drawn between a case in which the alleged cause of action arose before and one in which it arose after the war began. He admitted that if the rent sued for had been due before the commencement of the war the defendant could have been sued for it, but he said that as it was not due until after the war had begun the right of action is suspended during the continuance of hostilities. I seek in vain in the cases cited for any authority for such a proposition; indeed, it appears to me to be wholly contrary to reason and I must reject it. I think the defendant is liable to be sued for the rent which became due in June, July, and August, 1915, notwithstanding the fact that he is an alien enemy." Per Ridley, J., in Halsey *v.* Lowenfeld [1916] 1 K. B. 143.

A personal judgment is not enforceable unless there was actual service within the jurisdiction or the defendant appeared and answered to the merits. Livingston *v.* Jordan (1869), Chase, 454, F. C. No. 8415; Rockhold *v.* Blevins (1873), 6 Baxt. (Tenn.) 115; Walker *v.* Day (1874), 8 Baxt. (Tenn.) 77; Grinnan *v.* Edwards (1883), 21 W. Va. 347; Cuyler *v.* Ferrill (1869), 8 Am. L. Reg. (N. S.), 100. See also Pennoyer *v.* Neff (1877), 95 U. S. 714, 24 L. ed. 565. Although the exact point does not seem to have arisen, it seems that service may be made by publication in divorce and analogous cases.

The chief difference of opinion in the American courts is as to cases where jurisdiction is based on the attachment of property within the jurisdiction, and the judgment is limited to the property so attached. As to foreclosure of liens and mortgages see section 8 (a), and notes thereto, where a number of additional cases are discussed.

One of the earliest cases sustaining the doctrine that proceedings may be instituted against alien enemies by attachment of property is Hepburn's Case (1830), 3 Bland (Md.), 95, where Bland, C., says: "There can be no doubt that Hepburn may have proceeded by attachment at any time during peace, but it is said, that the Revolutionary War had commenced before this debt became due; and, that from the 4th of July, 1776, to the peace of 1783, the Mollisons were alien enemies. It is now, however, universally admitted, that an alien enemy, resident in the country, may sue and be sued; and further, that the remedies on private contracts for the recovery of debts are not forever barred, but merely suspended by a war between the nations of the creditor and debtor. The only reason why a non-resident alien enemy is not allowed to sue is, that he should not be permitted to recover property and take it out of the country, so as thereby to strengthen the enemy. Vattel, b. 3, section 77; Clarke *v.* Morey, 10 John. Rep. 70; Buchanan *v.* Curry, 19 John. Rep. 137.

"But this reason in no way applies to the case of a citizen creditor, suing by attachment to obtain satisfaction from a non-resident alien enemy debtor. In such case, our own citizen by making the property so available to the satisfaction of his own debt, does so far strengthen our own country at the expense of the enemy. Willis *v.* Pearce, 6 H. & J. 191, note. The disability of an alien enemy to sue is so extended as to prevent him from gaining any advantage for himself and his country; and, therefore, he is not only disabled from suing for the purpose of procuring any immediate relief; but he is not allowed to obtain testimony by a bill of discovery in equity, so as thereby to lay a foundation for obtaining relief elsewhere, that is, by attachment or otherwise from the property of our citizens in the alien's own country or elsewhere. Daubigny *v.* Davallon, 2 Anstr. 463; Albretcht *v.* Sussmann, 2 Ves. & B. 323.

"It is clear then, upon principle, that there was nothing in the circumstances of the Mollisons having been non-resident alien enemies by which the remedy of their creditor Hepburn could have been in any degree affected. Hepburn might have proceeded by attachment at any time after his debt became due on the first of April, 1776, except within that short period during which, by the course of the Revolution, the courts of justice were closed; and which it was declared should not be considered as a part of the time limited for bringing any action. February 1777, ch. 15, section 7."

In Dorsey *v.* Kyle (1869), 30 (Md.) 512 (per Alvey, J.), it was said: "If a party, though an alien enemy, be suable at all, it is difficult to suggest a good reason why the same proceedings cannot be had by his creditors against his property remaining within the jurisdiction of the State that can be taken against the property of any other non-resident debtor whatever. His being an alien enemy does not make him the less a non-resident debtor. The right of his creditors to proceed by attachment was not suspended because he thought proper to assume the position of an alien enemy. All the remedies provided by law against the property of an absent or non-resident debtor, remained open to them; and if they have pursued those remedies in the mode prescribed by law, the debtor himself can make no question of their right so to do, upon the ground that he no longer remained in amity with them or their government." See also Thomas *v.* Mahone (Ky., 1873), 12 Am. L. Reg. 433; Selden *v.* Preston (1875), 11 Bush (Ky.), 191; McVeigh *v.* United States (1870), 11 Wall. 259, 20 L. ed. 80; Dorsey *v.* Dorsey (1869), 30 Md. 522, overruled in Dorsey *v.* Thompson (1872), 37 Md. 25.

Against the validity of jurisdiction acquired by attachment, the legal impossibility of the notice reaching the defendant and his inability to comply with it are urged. Thus, in Dorr *v.* Gibboney (1878), 3 Hughes, 382, F. C. No. 4006 (per Rives, J.): "The sufficiency and regularity of the seizure in this case is beyond dispute, and is not in controversy. But the objection lies to the order of publication, of which affidavit is duly made under date of the 9th of August, 1862. The publication was, therefore, made during the war, when all intercourse or correspondence between the citizens of the belligerent States was interdicted. Dorr could not lawfully have received it, and if he had done so surreptitiously, he could not have obeyed the summons, and repaired to his defence before an insurrectionary tribunal. The question, therefore, arises whether a publication under such circumstances fulfils the requirements or intentions of the law. Had these transactions transpired in a time of peace, there can be no doubt of the validity of this judgment. But a publication *flagrante bello*, purporting to be notice to a citizen of a belligerent state, is, in the language of Justice Bradley, delivering the opinion of the court in Dean *v.* Nelson, 10 Wall. 172, 'a mere idle form; the party could not lawfully see or obey it.' I would add further, it is a mockery of justice. To the same effect are the subsequent cases of Ludlow *v.* Ramsey, 11 Wall. 581; Lasere *v.* Rochereau, 17 Wall. 438, and Earle *v.* McVeigh, 1 Otto, 503. Under these decisions I am constrained to regard the publication of the summons at that time and under the circumstances as a nullity. There is, therefore, in my view a jurisdictional defect in these proceedings by attachment, which renders the judgment void."

A similar position is taken in Walker *v.* Day (1874), 8 Baxt. (Tenn.) 77 (per Turney, J.): "The remaining question is, was Walker in court by the publication? It appears that he had left the State for about one year before the filing of the bill, and was, from that time to the close of the war, within the Confederate lines, while Knoxville, where the suit was instituted and publication made, was within the Federal lines. To have returned, if he had been at liberty to do so, would have been to have gone into voluntary imprisonment, and thereby to have as completely deprived himself of the means of defense as to have remained within the Confederate lines. Communication was prohibited, if not by legislative, by the more effective power, force of arms. Publication is a substitute for summons, and is presumed, under ordinary circumstances, to come to the notice of him to whom it is directed. In war such as then raged in these States, no such presumption can arise for and against parties divided by two hostile armies, with every inlet and outlet picketed and guarded every moment of day and night by details from every arm of the service on both sides. It was next to impossible for persons to pass through; the attempt to do so was taking one's life into his own hands, and running the gauntlet with all the chances against him. To have presumed that the notice was seen or known of, and therefore requiring the party to be affected by it, was to presume and require impossibilities."

Maury in an article in 14 Am. L. Reg. (N. S.) 129, says of this doctrine: "That such proceedings against non-resident enemies are null and void in the eye of natural law and the law of nations does not admit of doubt. It is to be kept in view that such proceedings are in no sort belligerent in their character. They purport to be founded in notice, or, to say the very least, a possibility of notice, else they could have no validity at any time, but when set on foot against an enemy, they are, in fact, carried on in a state of public affairs which makes it absolutely illegal for any kind of notice to be given to or received by the defendant, and for that reason they are wanting in the essential condition of a judicial act. Under the mask of judicial proceedings *inter partes* to determine private rights, they are, in effect, proceeding in confiscation in defiance of the *jus gentium* which does not allow such suits by private citizens. . . . To reconcile such proceedings with the humane principle of the international code, that pending war the rights of each belligerent in the country of the other are preserved and protected by law, the enjoyment or enforcement of them only being suspended, would baffle the acutest intellect." He does not consider these views as contrary to the decision of the United States Supreme Court in McVeigh *v.* United States (1870), 11 Wall. 259, 20 L. ed. 80. "The proposition that a non-resident enemy may be sued was correct in McVeigh's case. That case was a belligerent proceeding. It was a proceeding *in rem;* and the only handle McVeigh had to contend that his property was improperly condemned without his being heard was afforded by the fact that the confiscation laws were not levelled at all enemies, but only certain classes of them, and that while those laws of necessity required proceedings under them to be conducted during the war, such proceedings being one of the ways of carrying on the war, they graciously permitted any enemy whose property was seized, preliminary to confiscation, to come in and show that he did not belong to any of the proscribed classes, if he was fortunate enough to get wind in time of the proceedings set on foot against his property, otherwise, whether he got notice or not, his property might be wrested from him by a sentence of condemnation. The fact that the statutes only reached the property of certain classes impliedly gave a *locus standi in judicio* to all enemies who did not fall within those classes to resist proceedings to confiscate their property. In Miller's Case, 11 Wall. 268, it was sought to show after the war that Miller, whose property had been confiscated, was a loyal citizen all the time. But the court refused to reopen the sentence of condemnation, notice or a possibility of notice to the owner of the property being wholly immaterial to the validity of the proceeding, which was *in rem* and derived all its validity from the power to make war. Of course, then, any argument from proceedings so anomalous to ordinary suits *inter partes*, for the ascertainment and protection of private rights, must needs be misleading and harmful."

If an alien enemy can be sued, it follows as corollary, that he has the right to defend. It has been said that this right is guaranteed under the

Fifth Amendment to the Constitution of the United States. Buford *v.* Speed (1875), 11 Bush (Ky.), 338.

"No party can ever be estopped or in any way prejudiced by any judgment or decree, if the record in the first suit on its face shows, that he had no opportunity to be heard in opposition to the entry of such judgment or decree." Haymond *v.* Camden (1883), 22 W. Va. 180, and Stevens *v.* Brown (1884), 24 W. Va. 234, "decide expressly that a sentence of a court pronounced against a party when the court did not hear him or give him an opportunity to be heard, is not a judicial determination of his rights and is not entitled to respect in any other tribunal. It must follow as a matter of course, that such party cannot be estopped by such a decision as *res judicata* in any other suit between the same parties involving the question at issue and so decided in the first suit. In each of these cases the party, against whom the decision was rendered, was, when it was rendered, resident in a country at war with the country, in which such decision was rendered, and thus could have no opportunity to be heard on the questions decided. Such decision was not binding on him as *res adjudicata.*" McCoy *v.* McCoy (1887), 29 W. Va. 794 (per Green, J.).

In McVeigh *v.* United States (1870), 11 Wall. 259, 20 L. ed. 80, proceedings in confiscation under the Act of July 17, 1862, were instituted by the government for the purposes of forfeiture and sale of the property of McVeigh. Notice was served by publication. McVeigh appeared by counsel, interposed a claim to the property and filed an answer. Upon motion of the government, the court made an order that the appearance, answer and claim should be stricken from the files on the ground that the defendant was a non-resident alien enemy. The United States Supreme Court, per Swayne, J., reversing the court below held: "In our judgment the District Court committed serious error in ordering the claim and answer of the respondent to be stricken from the files. As we are unanimous in this conclusion, our opinion will be confined to that subject. The order in effect denied the respondent a hearing. It is alleged that he was in the position of an alien enemy, and hence could have no *locus standi* in that forum. If assailed there, he could defend there. The liability and the right are inseparable. A different result would be a blot upon our jurisprudence and civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first principles of the social compact and of the right administration of justice. . . . Whatever may be the extent of the disability of an alien enemy to sue in the courts of the hostile country, it is clear that he is liable to be sued, and this carries with it the right to use all the means and appliances of defence. In Bacon's Abridgment, (Title Alien, D) it is said: 'For as an alien may be sued at law, and may have process to compel the appearance of his witnesses, so he may have the benefit of a discovery.'"

The language of Justice Swayne in the case just cited is cited with approval by Bailhache, J., in Robinson & Co. *v.* Continental Insurance Co. of Mannheim [1915] 1 K. B. 155: "The next question is, can he appear and defend either personally or by counsel? I think he certainly can. To allow an action against an alien enemy to proceed and to refuse to allow him to appear and defend himself would be opposed to the fundamental principles of justice. No state of war could, in my view, demand or justify the condemnation by a civil court of a man unheard. . . . I desire to adopt the language of the learned judge as my own, except that I am not such a convinced disciple of Rousseau as to be able to base any opinion upon the principles of the social compact to which Swayne, J., refers."

The right to defend includes the right to have all necessary processes to compel the attendance of witnesses, discovery and the like, and to set up any defense by way of set-off.

But an alien enemy defendant is limited to a presentment only of such matters as relate to the plaintiff's claim, not to matters of an independent character. He cannot counterclaim nor set up claims against third parties.

In Halsey *v.* Lowenfeld [1916] 1 K. B. 143, a lease in respect of property in London was entered into in 1895 for a term of 24 years, payable monthly in advance at the rate of £500 per month. The sum of £3,250 was deposited by the defendant with the lessor as security for the payment of the rent and performance of the covenants. The lease was assigned by the lessee to other parties. The defendant was an Austrian subject, resident in Austria. The defendant gave notice that if he was held to be an alien enemy he would contend that the contract with the lessor was void or at all events suspended by the war, and he also served a third party notice upon the owner of the term and upon the sub-lessee in possession, claiming that if he was held liable to the plaintiffs for the rent, the said third parties were liable to indemnify him. For the defendant it was argued that the contract was suspended and that by reason of the war the intercourse involved in the performance of the obligations under a lease is prohibited so that the defendant could not be sued on his contract during the continuance of the war, that it should not be averred with certainty that performance by the defendant cannot possibly result in detriment to Great Britain or advantage to the enemy and that there was no cause of action, for the defendant's contract under the lease was suspended before the rent had accrued, and that, therefore, the case was distinguishable from Porter *v.* Freudenberg [1915] 1 K. B. 857, because there the suit was in respect of rent accrued prior to the war. It was furthermore argued that he was entitled to serve a third party; in this case he was entitled to be indemnified, and that the liability to be sued involves the right to take all necessary steps to defend himself, including such third party notice. Ridley, J., said: He further sets up a claim against third parties claiming that if he is liable for the rent to the plaintiffs the third parties are liable to indemnify him. . . . But does that right of setting up a defense include the right to take third party proceedings? I think not. For the defendant is the person first setting the court in motion in respect of the third party proceedings, and (to quote again from the judgment of Lord Reading, C. J., in Porter *v.* Freudenberg [1915] 1 K. B. 857): 'When once hostilities have commenced he cannot, so long as they continue, be heard in any suit or proceeding in which he is the person first setting the court in motion.' No doubt the third party proceedings are necessary for a proper presentment of the defendant's whole case relating to the liability alleged, but not for a presentment of his defense to the plaintiff's claim. They are quite independent of such defense. I must therefore hold that the defendant is not entitled to maintain these proceedings against the third parties."

The distinction is well brought out by Sargant, J., in Stahlwerk Becker Aktiengesellschaft's Patent [1917] 2 Ch. 272: "The question really is this: Is what the German company are proposing to do something which is substantially by way of defense to the proceedings against them, or is it something which is by way of initiative and not merely by way of defense? Let me illustrate it in this way. It is well settled that an alien enemy may, in any proceeding against him, set up a set-off by way of diminution of the claim of the plaintiff, that set-off being, of course, a defence which could not result in an actual order for the payment to the defendant of any sum at all. On the other hand, an alien enemy cannot counterclaim, because, although the counterclaim is dealt with, by virtue of the Rules of Court, in the same proceedings as the claim, it is in its nature an affirmative and not a defensive proceeding, and may result in a larger sum being payable to the defendant—that is, the plaintiff on the counterclaim—than would be payable by him to the plaintiff in the action. Now is this application for liberty to disclaim a merely defensive application, or is it, to any considerable extent, an affirmative application? For the purpose of answering that question I have to look at sections 21 and 22 of the Act of 1907. Under section 21 there is an initial right, quite apart from any pending litigation, given to a patentee of applying for leave to amend his specification, either by way of disclaimer, or by way of correction, or by way of explanation; and it is conceded by Mr. Walter, who appears for the German patentees, that an alien enemy could not initially, and without there being any pending proceedings, apply under section 21 for leave to amend his specification. That would be an affirmative step which would not be available to him. On the other hand, when section 22 is looked at, it is obvious that the ambit of the section is very much more limited than that of section 21. There is no right under section 22 to correct or explain, and the sole right given by it is a right to apply for leave to disclaim."

The right to defend includes the right to appeal. "Equally it seems to result that, when sued, if judgment proceed against him, the appellate courts are as much open to him as to any other defendant. It is true that he is the person who may be said in one sense to initiate the proceedings in the appellate court by giving the notice of appeal, which is the first necessary step to bring the case before that court; but he is entitled to have his case decided according to law, and if the judge in one of the King's courts has erroneously adjudicated upon it he is entitled to have recourse to another and an appellate court to have the error rectified. Once he is cited to appear he is entitled to the same opportunities of challenging the correctness of the decision of the judge of first instance or other tribunal as any other defendant." Per Lord Reading, C. J., in Porter *v.* Freudenberg [1915] 1 K. B. 857.

But an alien enemy has no right to appeal during war, where he was originally the plaintiff: "We cannot see any distinction in principle between the case of an alien enemy seeking the assistance of the King to enforce a civil right in a court of first instance and an alien enemy seeking to enforce such right by recourse to the appellate courts. He is in either case seeking to enforce his right by invoking the assistance of the King in his courts. He is the 'actor' throughout. He is not brought to the courts at the suit of another, it is he who invokes their assistance; and it matters not for this purpose that a judgment has been pronounced against him before the war. When once hostilities have commenced he cannot, so long as they continue, be heard in any suit or proceeding in which he is the person first setting the courts in motion. If he had given notice of appeal before the war, the hearing of his appeal must be suspended until after the restoration of peace." Lord Reading, C. J., in Porter *v.* Freudenberg [1915] 1 K. B. 857. Accord: Canadian Stewart Co. *v.* Perih (1915), 25 Que. S. C. 158, 17 Que. Prac. Rep. 291; Taylor *v.* Albion Lumber Co. (Cal. 1917), 168 Pac. 348.

An alien defendant enemy is entitled to his costs. Rydstrom *v.* Krom (British Columbia, 1915), 31 West. Law Rep. 7. But, *semble*, the defendant's right to issue execution thereon is suspended. Robinson & Co. *v.* Continental Insurance Co. of Mannheim [1915] 1 K. B. 155.

" By counsel."

But the defendant has no right to appear in person to conduct his defense. At common law he would have this right. Robinson & Co. *v.* Continental Insurance Co. of Mannheim [1915] 1 K. B. 155, where Bailhache, J., says: "I have come to the conclusion that there is no rule of common law which suspends an action in which an alien enemy is defendant, and no rule of common law which prevents his appearing and conducting his defense. In this case I understand that the presence of the alien enemy in this country at the trial is not necessary and is not contemplated, and no difficulty arises such as might otherwise be created by the impossibility of his getting here, and no question arises in this case as to whether an express license to come into this country is necessary or whether a license would be implied from the fact of the process of the court, and I express no opinion upon it. It may be that in this case the war has so hampered the defendants in the preparation of their case, in their witnesses, or in other ways, that it would be right to grant them a postponement on those grounds. If any application is made to postpone the trial on grounds of that character it will be dealt with on its merits." So also Lord Reading, C. J., in Porter *v.* Freudenberg [1915] 1 K. B. 857: "Once the conclusion is reached that the alien enemy can be sued, it follows that he can appear and be heard in his defense and may take all such steps as may be deemed necessary for the proper presentment of his defence. If he is brought at the suit of a party before a court of justice he must have the right of submitting his answer to the court. To deny him that right would be to deny him justice and would be quite contrary to the basic principles guiding the King's courts in the administration of justice."

The Act gives an implied license to counsel to appear on behalf of the defendant, and excepts contracts made with counsel for such services from the general prohibition against the making of contracts during war. In Russ *v.* Mitchell (1864), 11 Fla. 80, it was held (per Forward, J.) that "if the appellant in this case could by the practice of the court be still recognized as party defendant, or could be made a party defendant, then upon the general principle that no person can be made a party to a suit against whom no judgment can be asked, he would be entitled to be heard in his defense. If he can be heard in his defense, it follows that by every principle of justice and rule of practice, permission is given him to appear by attorney. It is argued that as a consequence of war, all intercourse or traffic with the enemy is prohibited, and contracts made during the war, are void, and therefore attorneys of this court cannot be employed to appear for such a defendant. This is true as a general principle, and is applicable to all commercial relations, without the express permission of the government. There are, however, exceptions to this rigorous rule arising out of a public necessity created by the war itself. Antoine *v.* Morshead, 6 Taunt. 237. We do not think the appearance of attorney in this case is a commercial transaction or one within the policy and meaning of the restriction. It would be revolting to the rules of justice which govern a court, to drag therein a party, and then say to him, although you are properly before the court, you are an alien enemy and shall not be heard, yet judgment shall be rendered against you. We are of the opinion that an alien enemy may be made a party defendant to a suit in our courts, and that when made a party, may be heard by attorney in his defense."

So also in Buford *v.* Speed (1875), 11 Bush (Ky.) 338, per Cofer, J.: "Having a right to make defense, it follows that Buford had a right to employ counsel, for without counsel no defense could be made. In order to secure counsel he must have had a right to contract with attorneys residing within the enemy's country where the court was sitting in which the counsel was to appear, and to pay them for their services, otherwise the established right to make defense is a delusion and a mockery." To the same effect, McVeigh *v.* United States (1870), 11 Wall. 259, 20 L. ed. 80; McNair *v.* Foler (1875), 21 Minn. 175. No question appears ever to have arisen in England regarding the right of a defendant to be represented by counsel, and to make the necessary contracts with his solicitor.

" Receipt of notice . . . any contract or other obligation."

Such notice from the President constitutes a *prima facie* defense to any suit or action brought or maintained by an enemy or ally of enemy. Such notice is furthermore a defense to any right or set-off or recoupment asserted by such enemy or ally of enemy, provided that such right or set-off or recoupment is based on a failure to complete or perform since the beginning of the war, any contract or other obligation. It does not refer to rights or set-off, or recoupment set up by such person and based on failure to complete or perform any contract or obligation where the failure to complete or perform occurred prior to April 6, 1917.

Mere suspicion that the amount sued for may, if received be paid to an enemy does not justify an order to stay proceedings until the termination of the war. White *v.* T. Eaton Co. (1916), 30 Dom. L. R. 459. See also *supra*, p. 173, as to President's power to suspend.

"In any prosecution under section 16 hereof, etc."

See section 3 and notes, *supra*, p. 133.

Surrender of enemy property.

(c) If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian.

"If the President shall so require . . . shall be conveyed . . . or paid over."

The property is received in trust to be dealt with in accordance with section 12. The Act in all its provisions, looks to the conservation, not the confiscation of enemy property. As to abrogation of certain classes of contracts, see *infra*, p. 259. As to abrogation of insurance contracts, see *supra*, p. 161.

Right of confiscation of enemy property.

The security of the persons and property of domiciled alien merchants, was guaranteed on condition of reciprocity, by Magna Charta, art. 42: "If they (merchants) be of the land at war against us, and if such shall be found in our land at the beginning of war, they shall be attached without loss of person or property, until it be known by us or our chief justiciary how the merchants of our land are treated who are found then in the land at war with us; and if ours be safe there the others shall be safe here." And this security was extended to resident alien merchants by the Statute of Staples, 27 Edw. 3, St. 2. For a review of the authorities, see the opinion of Chancellor Kent, in Clarke *v.* Morey (1813), 10 John. (N. Y.) 69.

The right to confiscate enemy property on land has frequently been asserted by the English and American courts. Hale, 1 Pleas of the Crown, 95, says that "by the law of England debts and goods found in this realm belonging to alien enemies belong to the king and may be seized by him." "But," says Lord Ellenborough in Wolff *v.* Oxholm (1817), 6 M. & S. 92, "the books referred to do not furnish an instance of the seizure of debts or a decided case in support of the legality of the seizure." See also Lord

Reading, in Porter *v.* Freudenberg [1915] 1 K. B. 857, citing Attorney-General *v.* Wheeden (1699), Parker, 267; Antoine *v.* Morshead (1815), 6 Taunt. 237. Lord Reading adds: "the right of confiscation is only of importance to trace the history and foundation of our common law, since there is manifestly no question of exercising this right." Lord Mansfield, in Cornu *v.* Blackburn (1781), 2 Doug. 640, said that "it is sound policy as well as good morality to keep faith with an enemy in time of war."

In the United States the abstract right to confiscate has been asserted, but such confiscation requires an act of Congress, and does not arise as a consequence of the declaration of war. See Ware *v.* Hylton (1796), 3 Dall. 199, 1 L. ed. 568.

In Brown *v.* United States (1814), 8 Cr. 110, 3 L. ed. 504, Marshall, C. J., says: "That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself. That remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will. But until that will shall be expressed, no power of condemnation can exist in the court. The questions to be decided by the court are: 1st. May enemy's property, found on land at the commencement of hostilities, be seized and condemned as a necessary consequence of the declaration of war? 2nd. Is there any legislative act which authorizes such seizure and condemnation? Since, in this country, from the structure of our government, proceedings to condemn the property of an enemy found within our territory at the declaration of war, can be sustained only upon the principle that they are instituted in execution of some existing law, we are led to ask, Is the declaration of war such a law? Does that declaration, by its own operation, so vest the property of the enemy in the government, as to support proceedings for its seizure and confiscation; or does it vest only a right, the assertion of which depends on the will of the sovereign power? The universal practice of forbearing to seize and confiscate debts and credits, the principle universally received, that the right to them revives on the restoration of peace, would seem to prove that war is not all absolute confiscation of this property, but simply confers the right of confiscation. Between debts contracted under the faith of laws, and property acquired in the course of trade on the faith of the same laws, reason draws no distinction; and although, in practice, vessels with their cargoes, found in port at the declaration of war, may have been seized, it is not believed that modern usage would sanction the seizure of the goods of an enemy on land, which were acquired in peace in the course of trade. Such a proceeding is rare, and would be deemed a harsh exercise of the rights of war. But although the practice in this respect may not be uniform, that circumstance does not essentially affect the question. The inquiry is, whether such property vests in the sovereign by the mere declaration of war, or remains subject to a right of confiscation, the exercise of which depends on the national will: and the rule which applies to one case, so far as respects the operation of a declaration of war on the thing itself, must apply to all others over which war gives an equal right. The right of the sovereign to confiscate debts being precisely the same with the right to confiscate other property found in the country, the operation of a declaration of war on debts and on other property found within the country must be the same. . . . The modern rule then would seem to be, that tangible property belonging to an enemy and found in the country at the commencement of war, ought not to be immediately confiscated. . . . Commercial nations, in the situation of the United States, have always a considerable quantity of property in the possession of their neighbours. When war breaks out, the question, what shall be done with enemy property in our country, is a question rather of policy than of law. The rule which we apply to the property of our enemy will be applied by him to the property of our citizens. Like all other questions of policy it is proper for the consideration of a department which can modify it at will; not for the consideration of a department which can pursue only the law as it is written. It is proper for the consideration of the legislature, not of the executive or judiciary. It appears to the court, that the power of confiscating enemy property is in the legislature, and that the legislature has not yet declared its will to confiscate property which was within our territory at the declaration of war."

While the power to confiscate enemy property may be conceded, it has not been exercised by the United States since the Revolutionary War, when some of the States passed such laws against the Tories. The Confiscation Acts of the Civil War were directed not alone against enemy property as such but had also in view the punishment of the owner for participation in a rebellion. Cp. Miller *v.* United States (1870), 11 Wall. 268, 20 L. ed. 135; Planters Bank *v.* Union Bank (1872), 16 Wall. 483, 21 L. ed. 473; Risley *v.* Phenix Bank (1881), 83 N. Y. 318. The Confederate States passed an Act in August, 1861, declaring that "property of whatever nature, except public stocks," held by an alien enemy since a designated date were to be sequestrated and appropriated. This action was reprobated by European opinion, and Lord Russell protested against it on behalf of British subjects domiciled in the Northern States. Bentwich, War and Private Property, 9. And Clifford, J., in Hanger *v.* Abbott (1867), 6 Wall. 532, 18 L. ed. 935, says that "there is no exigency in war which requires that belligerents should confiscate or annul debts."

Sequestration, and confiscation of property, shares, and debts was expressly forbidden in treaties between the United States and France (1800), and between the United States and England (1795). The provision in the latter treaty appears not to have been abrogated by the War of 1812. Dana's Wheaton, International Law, section 275 (3), and note. See also treaty between the United States and Peru (1851).

Page, War and Alien Enemies, 2d ed. 34–36, upholds the right to confiscate property and bar debts: "It would be unlawful for a State according to international law to bar the remedy of the creditors of alien enemies, and to compel payment of the debts of alien enemies for the use of the public. Whether it is prudent for a belligerent to confiscate the property of alien enemies in its territory is a matter rather of policy than of law. It may in some cases be both common sense and simple justice to do so, for the confiscation of debts and other choses in action 'as well as that of property of any kind, may serve as an indemnity for the expenses of war, and as a security against future aggression. That such confiscations have fallen into disuse, has resulted not from the duty which one nation, independent of treaties, owes to another, but from commercial policy which European nations have found a common and indeed a strong interest in supporting (per Elsworth, C. J., in Hamilton *v.* Eaton (1791), N. C. Cases 79)."

He considers that even the rights of protection to property are limited. "The court would probably interfere, in the exercise of its criminal jurisdiction, to prevent the property of such persons from being appropriated, destroyed, or injured by private individuals. But it is submitted that, even after the war, alien enemies, not resident during the war in this country *per licentiam et sub protectione regis*, would not be entitled to any redress by way of civil process in respect of injuries inflicted upon their persons or their property during the war; for example, assault or trespass to property. It might be contended that, so long as the Crown did not confiscate the property of alien enemies in this country, the court would infer that the Crown had by implication permitted and licensed alien enemy owners to hold such property during the war, and that therefore, *quâ* owners of such property, they must be deemed to be alien friends; but it is submitted that such a contention ought not to prevail, as being inconsistent with the well-established rule that alien enemies, not resident here *per licentiam regis*, are not entitled to any rights or privileges (see also Brooke's Abridg. p. 167; and Daubigny *v.* Davallon, 2 Anst. 462. The decision in this case supports the general proposition laid down, and any expressions of Macdonald,

C. B., which may seem to conflict with the general rule are too wide, and, it is submitted, would not be followed). At the same time, it would seem from the legislation which has been passed since the outbreak of war relating to trademarks, patents, and designs, that the Government and their advisers were not satisfied that, after the war, alien enemies would not be entitled to claim redress by legal process for infringement of their patent rights during the war." But a contrary view has been announced in Posselt *v.* Despard (N. J., 1917), 100 Atl. 893, where Lane, V. C., says: "I am convinced that there is no interest of the United States which requires the court, in advance of a definite command by the constituted authorities, to refuse to protect, at their instance, the rights of alien enemies resident abroad in property in this country. If it be said that this is in conflict with certain prior decisions the answer is that the solution of the question depends upon public policy, and while it is not the function of the court to establish a public policy, it is the function and the duty of the court to determine as a matter of fact what the policy actually is, and it is the policy of the present day, not that of some years ago, that must be determined. Tolerance is the keynote of the President's Proclamation, and by that I am bound."

Latifi, Effects of War, 49, thinks that the right should be exercised only under exceptional circumstances. "Both reason and authority justify the conclusion that the property of enemy subjects found within a belligerent's jurisdiction cannot be captured as an ordinary measure of war. The sovereign may seize it as an act of retorsion for injury done to his own subjects or as a punishment for a breach of international law by his enemy."

During the present war none of the principal belligerents has proceeded to confiscation of enemy property, if we except the action of Russia in annulling patents, and the retaliatory measure enacted by Germany in regard to German patents owned by Russians. The sequestration of enemy property provided for by the laws of a belligerent is not confiscation. Georgia *v.* Brailsford (1794), 3 Dall. 1, 1 L. ed. 483.

Government obligations.

A peculiar sanctity has attached to government obligations owned by alien enemies. Regarding this class of obligations Hall, International Law, 5th ed. 437, says: "In one case a strictly obligatory usage of exemption has no doubt been established. Money lent by individuals to a state is not confiscated, and the interest payable upon it is not sequestrated. Whether this habit has been dictated by self-interest, or whether it was prompted by the consideration that money so lent was given 'upon the faith of an engagement of honour, because a Prince cannot be compelled like other men in an adverse way by a Court of Justice,' it is now so confirmed that in the absence of an express reservation of the right to sequestrate the sums placed in its hands on going to war a state in borrowing must be understood to waive its right, and to contract that it will hold itself indebted to the lender and will pay interest on the sum borrowed under all circumstances."

During the War of 1812, the United States Government regularly paid the interest on United States obligations held by persons resident in England, and in fact purchased bills on England to meet those payments. During the present war some of the belligerents have suspended payment of their state obligations to alien enemies, but there has been no attempt at confiscation.

Private debts.

The right to confiscate debts due from individuals to an alien enemy has been denied by Lord Ellenborough in Wolff *v.* Oxholm (1817), 6 M. & S. 92, and by Chancellor Wythe in Page *v.* Pendleton (1793), Wythe's Va. Rep. 211. The propositions of law laid down in the latter case are: "That a war, of itself, doth not extinguish the rights, and, consequently doth not discharge the obligations, which existed before the commencement of it, between members of the different belligerent societies, although, during the continuance of the war, forensian assertions of the one, that is, the rights, and exactions of performance of the other, that is, the obligations, are not permitted in that country where the claimants are aliens;

"That the right to money due to an enemy cannot be confiscated; because only things whereof manual occupation may be, to which class a right, being incorporeal, doth not belong, are confiscable; insomuch that perdition of the hostile proprietor's right is not effected by his captivity, or even slaughter, but, in the latter event, his representative succeeds to it; . . .

"That the right to money due, which is concomitant with the person of the creditor, cannot be extinguished by the legislature of the debitor's country, if, at the time of the legislative act, by which the extinguishment was intended to be wrought, the creditor were not a citizen or a subject of that country, or, being a foreigner, were not a resident or had not a *domicilium* therein; because such a creditor was not subject to the authority of that legislature, and consequently not bound by its acts. If the Parliament of Great Britain should, by an act, declare the rights of creditors, of any other, or all other countries, to money due from British subjects, to be extinguished, all courts, perhaps those of Westminster Hall not excepted, would adjure such legislative omnipotence, arrogated by the Parliament, but that Parliament hath not less power than any other legislature; . . .

"That if the creditor's right to money due from his debitor, of another country cannot be extinguished by a legislative act of that country, the debitor's obligation to pay the money cannot be absolved by a legislative act of the same country; because the legislature, which is at most only the representative of the debitor, and hath not more power than its constituent had, could not do that which the debitor could not have done; but the debitor could not by any act of its own, other than the payment to the creditor, or to some other empowered by him to receive the money, dissolve the obligation to pay it; and although, during a war between the nations of creditor and debitor, the former cannot compel the latter, by a judiciary sentence in his own country, to pay the money, such a sentence may be obtained during the war, in another country, if the debitor be found there; . . . Therefore the court, upon the principles before stated, being of opinion that the payments into the Loan Office, made by the plaintiff's testator, did not discharge his debts to his British creditors, directed the plaintiff in distributing the assets of his testator, not to distinguish British creditors, on account of their nation, from other creditors."

As one of the first expressions of judicial opinion during the present war in the United States, it is interesting to note that a New York court, in a case decided in June, 1917, uses the following language: "A state of war has never been held to confiscate a debt owing by a resident to a non-resident citizen of an enemy country. It may suspend the remedy of collection through our courts, or prohibit the transmission of the proceeds to the enemy country, but this is to prevent giving aid to the enemy country through sending resources to its citizens and not to enable the resident debtor to repudiate his liabilities." Per Tierney, J., in Rothbarth *v.* Herzfeld (1917), 100 Misc. (N. Y.) 470.

But the validity of the confiscation acts passed during the Revolutionary War, where the property or debt was taken as a punishment for adhering to the enemy was frequently sustained. See Cooper *v.* Telfair (1800), 4 Dall. 14, 1 L. ed. 721; Hamilton *v.* Eaton (1791), N. C. Cases, 79; Brown *v.* United States (1814), 8 Cr. 110, 3 L. ed. 504.

While the right to confiscate debts may in strictness still be said to exist "it may well be considered as a naked and impolitic right, condemned by the enlightened conscience and judgment of modern times." Per Clifford, J., in Hanger *v.* Abbott (1867), 6 Wall. 532, 18 L. ed. 835. Accord: Phillipson, Effect of War on Contracts, 38–45.

Interest on private debts due to alien enemy.

Upon the question as to whether interest is payable on private debts due to an alien enemy for the period of the war the authorities are in hopeless confusion.

The question came before the English courts in Belloix *v.* Lord Waterpark (1822), 1 Dow. & Ryl. 16, where Abbott, C. J., said: "But there is another objection to the plaintiff's recovering interest on the debt (as damages), for during the greater part of that time he was an alien enemy, and could not have recovered even the principal in this country, and, at all events, during that period of the time the interest could not have run, and it would even have been illegal to pay the bill whilst the plaintiff was an alien enemy."

In In re Fried Krupp Aktiengesellschaft [1917] 2 Ch. 188, the question arose as to the extent to which an English court would recognize a German law providing that no interest should be payable by German debtors to creditors residing in Great Britain from the date of the maturity until the end of the war. It was admitted that the contract between the company and a creditor of the company was to be interpreted and the rights of the parties regulated by German law, and it was agreed that under German law interest at the rate of 5 per cent. per annum was payable on the debt even in the absence of any agreement to that effect. Younger, J., said: "No objection can of course be taken on principle to any German enactment which would prohibit during the war any payment of money by a German to any person resident or carrying on business in enemy country, but the cancellation of all liability for agreed interest during suspense of payment, and that for the benefit of one party to the contract alone, stands on quite a different footing. The German debtor has the use during the period of suspension of the money he is prohibited from paying, and it is difficult to find any just reason why he should in these circumstances after the war be relieved of his contractual liability to pay interest when he is not relieved of the liability to repay the principal. In truth, however, there is no justice in the matter; the relief is interested and partial, as is sufficiently shown by the fact that it is not made reciprocal. In that state of things it appears to me impossible that any court in this country can recognize a German ordinance of this description, and there is, I think, a choice of grounds on which refusal to do so can properly be based. It may, I think, first of all be said that such an ordinance as this is no part of the general German law, by which the parties to this contract alone agreed to be bound. And even if such an ordinance must be treated as part of that law, it may, I think, properly be held that no such essentially one-sided development of the system could have been within the contemplation of either party to the contract at the time when they entered into it and agreed that their rights thereunder were to be regulated by German law. But, further, this ordinance, with its marked bias in favour of German nationals as against British subjects, can, in my opinion, create in this country no disability upon a person against whom its provisions are directed, and the language of Lord Ellenborough in Wolff *v.* Oxholm (6 M. & S. 92) may, with the necessary modifications, justly be applied to it, so far as it operates to extinguish all German liability for conventional interest, as being one which is not conformable to the usage of nations, and which, therefore, Messrs. Wild could not expect, and which neither they nor we are bound to regard. Whatever ground of decision is chosen, it is, I think, clear that in this court Messrs. Wild's debt carries interest unaffected by the ordinance."

The decided weight of American authority is to the effect that interest recoverable as damages is abated during war. In Pillow *v.* Brown (1870), 26 Ark. 240, it is said per Story, J.: "During war all intercourse between enemies is prohibited, and wherever the law forbids a party from doing an act, not *malum in se*, nor, at the time of entering into the agreement to do the act, *malum prohibitum*, it excuses him from all penalties arising from a failure to perform his contract. This, we think, furnishes a just reason for the abatement of interest, during war, on debts due to the subjects of a belligerent power, from the time the party is entitled to make payment, which would only be at and after maturity, until the return of peace. The principle is a general one and may be stated in these words: Whenever the debtor, without fault on his part, is prevented from paying the debt, at and after maturity, through the act of the creditor or the law, interest should be abated during the time he is so prevented. It is the duty of the debtor to seek his creditor and to pay his debt. He must show by affirmative proof that it was not through his neglect, accident, or misfortune, the debt was not paid at maturity; that he was ready and willing to pay, but that, through the act of the creditor or the law, he was prevented." See cases in 22 Cyc. 1562, Note 40.

Upon the point whether conventional interest is payable the authorities are divided. The United States Supreme Court has held that even conventional interest is suspended. "As the enforcement of contracts between enemies made before the war is suspended during the war, the running of interest thereon during such suspension ceases. Interest is the compensation allowed by law, or fixed by the parties, for the use or forbearance of money, or as damages for its detention, and it would be manifestly unjust to exact such compensation, or damages, when the payment of the principal debt was interdicted. The question whether interest should be allowed on such contracts during the period of war was much considered soon after the Revolution. In the case of Hoare *v.* Allen (2 Dall. 102), decided in 1789, by the Supreme Court of Pennsylvania, it was held that interest did not run during the war on a debt owing to an enemy, contracted previously. 'Where a person,' said the court, 'is prevented by law from paying the principal, he shall not be compelled to pay interest during the prohibition.' The legislation of Congress after the commencement of the War of the Revolution, like the legislation of 1861, prohibited commercial intercourse with the inhabitants of the enemies' country, and the court observed that the defendant could not have paid the debt to the plaintiff, who was an alien enemy, without a violation of the positive law of the country and of the law of nations, and that parties ought not to suffer for their moral conduct and their submission to the laws. The decision was followed by the same court in Foxcraft *v.* Nagle (2 Dall. 182) in 1791. Similar decisions were rendered by the Court of Appeals of Virginia and the Court of Appeals of Maryland. The counsel for the complainant attempts to draw a distinction between those contracts in which interest is stipulated and those to which the law allows interest, and contends that the revival of the debt in the first case, after the termination of the war, carries the interest as part of the debt; while in the latter case interest is allowed only as damages for the detention of the money. We are, however, of opinion that the stipulation for interest does not change the principle, which suspends its running during war. In the first case cited, from Pennsylvania, interest was stipulated in the contract. 'A prohibition,' says Mr. Justice Washington, in Conn *v.* Penn (1818), Peter's C. C. 496, 524, 'of all intercourse with an enemy during the war, and the legal consequence resulting therefrom, as it respects debtors on either side, furnish a sound, if not in all respects a just reason, for the abatement of interest until the return of peace. As a general rule it may be safely laid down that wherever the law prohibits the payment of the principal, interest during the existence of the prohibition is not demandable.'" Per Field, J., in Brown *v.* Hiatts (1872), 15 Wall. 177, 21 L. ed. 128.

Commenting on these cases Chadwick, Foreign Investments in Time of War, in 20 Law Quarterly Review, 167, says: "In Hoare *v.* Allen, 2 Dall. 102, the mortgage could not have been sued upon and presumably could not have been paid off for one year, and therefore interest ought to be allowed for that year, whatever happens during it. A mortgagor cannot, as of right, redeem before the time appointed in the mortgage deed; and if the mortgagee should as a matter of indulgence consent, at the request of the mortgagor, to accept payment before the legal period of redemption, he is entitled to the full amount of interest up to that time. West Derby Union *v.* Metropolitan Life Society [1897] 1 Ch. 335; [1897] A. C. 647; Brown *v.* Cole, 14 Sim. 427. In Hoare *v.* Allen, 2 Dall. 102, a judgment was given which apparently deprived the mortgagee of interest from the outbreak of war to the date of maturity, that is to say, from September 10 to December 4, but it is difficult to see why he should be deprived of this. If war had never been waged he still could not have sued on the mortgage till December 4. In Brown *v.* Hiatts, 15 Wall. 177, apparently interest was allowed for the first year, that is to say till maturity, because judgment was given for the 'principal' sued upon, namely $2,400, plus certain interest, and this 'principal' included $400, one year's interest on the real loan. The point which it is desired to make is, that when interest is stipulated on an instrument till maturity, that interest should be payable in any event. The interest up to maturity is the consideration for the immediate use of the money, not for any forbearance to sue, as no suit can be brought till then, except perhaps in certain special cases provided for in the deed or instrument. If the loan matures during the war and there is no agent to whom payment can be made, it is submitted that the correct view to take is that interest should run up to that date and then cease. Such a view is not in any way repugnant to the principles laid down in the dicta of the judges, though it is not sufficiently emphasized in Brown *v.* Hiatts, 15 Wall. 177, and is to a slight extent at variance with the judgment in Hoare *v.* Allen, 2 Dall. 102.

And the generally accepted view is that where the principal does not fall due during war, interest will continue to run. Lash *v.* Lambert (1870), 15 Minn. 416, 2 Am. Rep. 142. And this has been held to apply to all conventional interest. Mease *v.* Rhodes, cited in 2 Dall. 132, 1 L. ed. 319; Estate of Schaeffer (1823), 9 Sergt. & R. (Pa.) 263; *contra*, Brown *v.* Hiatts (1872), 15 Wall. 177, 21 L. ed. 128. In Griffith *v.* Lovell (1868), 26 Iowa, 226, the court was divided. Dillon, C. J. (Wright, J., concurring), said that he would "prefer to adopt the rule dictated by natural justice" and held, that "as the debtor has had the use of the money, the creditor should be allowed interest; indeed, as the interest is given by the contract, we do not see how the right to it can be denied, any more than the right to the principal. Such is the opinion of Chase, C. J., in Shortridge *v.* Mason (Am. Law Review, vol. 2, p. 95). My brothers Cole and Beck are of opinion, that, since, by the act of Congress, and the proclamation of the President in pursuance thereof, the debtor was prohibited from paying the creditor, interest should cease during the war, adopting by analogy the reason or principle of the rule applicable to wars between independent nations. See Tucker *v.* Watson, Am. Law Register, Feb. 1867; Jackson Ins. Co. *v.* Steward, id. Oct. No. 1867. The reason or principle of which rule being, that as it is unlawful for the debtor to pay, he should not be chargeable with interest—they not regarding this rule as in necessary conflict with the doctrine of Shortridge *v.* Mason, *supra.*"

In Spencer *v.* Brower (1870), 32 Tex. 664, the notes sued on were dated January 4, 1860, and payable respectively, on the 1st of March, 1862 and 1863, with interest at ten per cent. per annum from and after date. Lindsay, J., said: "Upon two notes for the sum of $1000 each, payable in the State of New York, suit was brought by the defendants in error against the plaintiff in error, to which a plea was interposed to defeat the recovery of the accrued interest, because of the prevalence of a state of war between the citizens of the State of Texas and the citizens of the United States which put it out of the power of the obligor to make payment. A demurrer to the plea was sustained by the court below, and rightfully. The defense has no merit as a matter of law, nor can it find any foundation in equity. In a time of war, in which parties to contracts are in hostility to each other, the judicial enforcement of contracts is in abeyance, but their obligation does not cease; and, with the restoration of peace, the remedy revives, and is restored to all its pristine vigor with it. This seems to be too obvious to require the citation of any authority in its support."

Where the creditor resident in the enemy country has a known agent within the territory, authorized to accept payment, interest will not abate. In an early case Conn *v.* Penn (1818), Peters C. C. 496, F. C. No. 3104, it was said that: "A prohibition of all intercourse with an enemy, during the war, and the legal consequence resulting therefrom, as it respects debtors on either side, furnish a sound, if not in all instances, a just reason for the abatement of interest, until the return of peace. . . . But, the rule can never apply in cases where the creditor, although a subject of the enemy, remains in the country of the debtor, or has a known agent there, authorized to receive the debt; because the payment to such creditor or his agent, could in no respect be construed into a violation of the duties imposed by a state of war upon the debtor. The payment in such cases is not made to an enemy, and it is no objection, that the agent may possibly remit the money to his principal. If he should do so, the offence is imputable to him, and not to the person paying him the money." Accord: Denniston *v.* Imbrie (1818), 3 Wash. C. C. 396, F. C. No. 3802.

"The objection that the bonds did not draw interest pending the Civil

War is not tenable. The defendant Ward, who purchased the land, was the principal debtor, and he resided within the lines of the Union forces, and the bonds were there payable. It is not necessary to consider here whether the rule that interest is not recoverable on debts between alien enemies, during war of their respective countries, is applicable to debts between citizens of States in rebellion and citizens of States adhering to the National government in the late Civil War. That rule can only apply when the money is to be paid to the belligerent directly. When an agent appointed to receive the money resides within the same jurisdiction with the debtor, the latter cannot justify his refusal to pay the demand, and, of course, the interest which it bears. It does not follow that the agent, if he receive the money, will violate the law by remitting it to his alien principal. . . . Here the principal debtor resided, and the agent of the creditor for the collection of the first bond was situated within the Federal lines and jurisdiction. No rule respecting intercourse with the enemy could apply as between Marbury, the cashier of the bank at Alexandria, and Ward, the principal debtor residing at the same place. The principal debtor being within the Union lines could have protected himself against the running of interest on the other two bonds, by attending on their maturity at the bank, where they were made payable, with the funds necessary to pay them. If the creditor within the Confederate lines had not in that event an agent present to receive payment and surrender the bonds, he would have lost the right to claim subsequent interest." Per Field, J., in Ward *v.* Smith (1868), 7 Wall. 447, 19 L. ed. 207. The same view is held in Neilson *v.* Rutledge (1791), 1 Des. Eq. (S. C.) 194. And see also cases cited in 22 Cyc. 1563, Note 42.

It is held in Padgett *v.* Jamshedji Hormusji Chothia (1915), 18 Bombay L. R. 190, that interest is suspended until the debtor has actual notice that the principal debt can lawfully be paid to a person licensed to receive it within the jurisdiction.

Inasmuch as the Trading with the Enemy Act, section 7, provides that payment of debts may be made to the Alien Property Custodian, all creditors who are "enemies" or "allies of enemy" may be regarded in a sense, as having a duly appointed agent within the United States to whom payment may lawfully be made, and, therefore, interest continues to run after the date of the appointment of such Custodian. Between April 6, 1917, and October 6, 1917, the liability for interest is determined by the general rules of the common law here discussed. Between October 6, 1917, and the date of the appointment and qualification of the Alien Property Custodian, *semble*, there was a general prohibition to pay to an agent otherwise authorized. As to creditors resident in Austria-Hungary, Bulgaria, and Turkey, interest is clearly payable up to October 6, 1917, because up to that date there was no prohibition against payment of the principal or of interest. This rule applies even though such creditor has no agent resident within the United States authorized to receive payment, unless, *semble*, it can be shown that remittances could not be safely made to these countries. Crawford *v.* Willing (1803), 4 Dall. (Pa.) 286, 1 L. ed. 836. After October 6, 1917, the rights of these creditors are determined in the same manner as those of creditors in the German Empire. What is here said as to ally of enemy creditors applies with equal force to all persons other than these, and who under the Act of Congress now are, or may hereafter be, declared to be enemies.

Where one of two or more joint debtors resides within the country with the creditor or his agent [Paul *v.* Christie (1798), 4 Harr. & M. (Md.) 161; Yeaton *v.* Berney (1871), 62 Ill. 61], or where, although the principal debtor is an alien enemy, his surety resides in the country with the creditor [Bean *v.* Chapman (1878), 62 Ala. 58] interest is not suspended. The latter case is supported on the ground that the principal's liability is reduced by law, without the fault or procurement of the creditor, and the principal's defense against the recovery of interest is a personal defense, not available to the surety.

An agreement after war to pay interest for the time during which the war continued is binding. Ingliss *v.* Nutt (1808), 2 Des. Eq. (S. C.) 623; Bainbridge *v.* Wilcox (1832), Baldwin, 536, F. C. No. 536. Cp. Borland *v.* Sharp (1790), 1 Root (Conn.), 178. It has been suggested that such an agreement requires a consideration to support it. Trotter (Supp.) 61.

" After investigation shall determine is so owing, or is so held."

The determination of the President is binding only on the debtor or holder of the property. It is not binding on the enemy or claimant.

Property may be transferred, and debts paid to Custodian.

(d) If not required to pay, convey, transfer, assign, or deliver under the provisions of subsection (c) hereof, any person not an enemy or ally of enemy who owes to, or holds for, or on account of, or on behalf of, or for the benefit of an enemy or of an ally of enemy not holding a license granted by the President hereunder, any money or other property, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, may, at his option, with the consent of the President, pay, convey, transfer, assign, or deliver to the Alien Property Custodian said money or other property under such rules and regulations as the President shall prescribe.

See note to preceding section.

Exemption from liability.

(e) No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Delivery or payment to Custodian full discharge of obligation.

Any payment, conveyance, transfer, assignment, or delivery of money or property made to the Alien Property Custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The Alien Property Custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the Alien Property Custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the Alien Property Custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee. The President shall issue to every person so appointed a certificate of the appointment and authority of such person, and such certificate shall be received in evidence in all courts within the United States. Whenever any such certificate of authority shall be offered to any registrar, clerk, or other recording officer, Federal or otherwise, within the United States, such officer shall record the same in like manner as a power of attorney, and such record or a duly certified copy thereof shall be received in evidence in all courts of the United States or other courts within the United States.

Enforcement of liens; notice of termination or acceleration of maturity of contract.

Sec. 8. (a) That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the Alien Property Custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally: *Provided*, That no such rule or regulation shall require that notice or presentation or demand shall be served or made in any case in which, by law or by the terms of said instrument or contract, no notice, presentation, or demand was, prior to the passage of this Act, required; and that in case where, by law or by the terms of such instrument or contract, notice is required, no longer period of notice shall be required: *Provided further*, That if, on any such disposition of property, a surplus shall remain after the satisfaction of the mortgage, pledge, lien, or other right in the nature of security, notice of that fact shall be given to the President pursuant to such rules and regulations as he may prescribe, and such surplus shall be held subject to his further order.

For a consideration of the law relating to suits against alien enemies, see *supra*, p. 220.

" Any person not an enemy or ally of enemy."

That is, all persons not within the definition of enemy or ally of enemy as given in section 2.

" Holding . . . right in the nature of security."

The provision covers all rights in property, real or personal, held as security. The creditor under the Act continues to hold property in accordance with the terms of the contract, and after default may dispose of the property in accordance with the terms of the agreement and institute such proceedings as may be necessary to perfect his rights. If the agreement or the law provides for notice, such notice may be served on the Alien Property Custodian.

Common-law provisions.

After the Civil War the question frequently came up before the American courts whether a notice by publication or other form of substituted service is a sufficient notice to a non-resident alien enemy. This provision in the Act is designed to provide for this class of cases. The decisions are conflicting. The principal ones are discussed below.

In Johns *v.* Slack (1875), 2 Hughes, 467, F. C. No. 7363, a United States Circuit Court refused to set aside a sale of land for the unpaid purchase price on the ground that the purchaser at the time of the sale was absent with the other belligerent and had not notice of the motion for the same or of the sale itself. It was, however, pointed out by the court that the sale was under a decree rendered prior to the war and while the debtor was still within the jurisdiction and that it did not in fact take place until

1864, when hostilities had practically ceased finally, and this is of importance. The bill to set aside the same was not brought until 1870, or six years after the sale.

The leading case is University *v.* Finch (1873), 18 Wall. 106, 21 L. ed. 818. In part payment of the purchase money for certain real estate, promissory notes were executed together with a deed of trust conveying the property thus purchased with authority to sell it on giving notice by publication in a newspaper. The debtors were both citizens of Virginia and continued to reside there during the Civil War. The land was situated in the State of Missouri. Upon default in payment of the notes, a sale by the trustees took place during the war and a suit was instituted after the war on the ground that the sale was invalid. For the plaintiffs it was argued that inasmuch as all commercial intercourse was forbidden between the people of the loyal States and those residing in the insurrectionary districts, both by virtue of the act of Congress and by the principles applicable to nations in a state of war, all processes for the collection of debts were suspended, and that the complainants being forbidden by these principles to pay the debt, there could be no valid sale of the land for default of such payment. It was also argued that the power in the deed to sell, which required a notice in a newspaper of the sale, was intended to apprise the complainants of the time and place of sale; and that inasmuch as it was impossible for such notice to reach them, situated as they were, no valid sale could be made.

Miller, J., said: "The case before us was not one of a sale by judicial proceeding. No aid of a court was needed or called for. It was purely the case of the execution of a power by a person in whom a trust had been reposed in regard to real estate, the land, the trustee, and the cestui que trust all being, as they had always been, within a State whose citizens were loyally supporting the nation in its struggle with its enemies. The conveyance by the complainants to Ranlett vested in him the legal title of the land, unless there was a statute of the State of Missouri providing otherwise, and if there was such a statute it still gave him full control over the title for the purposes of the trust which he had assumed. No further act on the part of the complainants was necessary to transfer the title and full ownership of the property to a purchaser under a sale by the trustee. The debt was due and unpaid. The obligation which the trustee had assumed on a condition, had become absolute by the presence of that condition. If the complainants had both been dead, the sale would not have been void for that reason, if made after the nine months during which a statute of Missouri suspends the right to sell in such cases. If they had been in Japan it would have been no legal reason for delay.

The power under which the sale was made was irrevocable. The creditor had both a legal and moral right to have the power made for his benefit executed. The enforced absence of the complainants, if it be conceded that it was enforced, does not in our judgment afford a sufficient reason for arresting his agent and the agent of the creditor in performing a duty which both of them imposed upon him before the war began. His power over the subject was perfect, the right of the holder of the note to have him exercise that power was perfect. Its exercise required no intercourse, commercial or otherwise, with the complainants. No military transaction would be interfered with by the sale. The enemy, instead of being strengthened, would have been weakened by the process. The interest of the complainants in the land might have been liable to confiscation by the government, yet we are told that this right of the creditor could not be enforced, nor the power of the trustee lawfully exercised. No authority in this country or any other is shown to us for this proposition. It rests upon inference from the general doctrine of absolute non-intercourse between citizens of States which are in a state of public war with each other, but no case has been cited of this kind even in such a war. It is said that the power to sell in the deed of trust required a notice of the sale in a newspaper, that this notice was intended to apprise the complainants of the time and place of sale, and that inasmuch as it was impossible for such notice to reach the complainants no sale could be made. If this reasoning were sound the grantors in such a deed need only go to a place where the newspaper could never reach them to delay the sale indefinitely, or defeat it altogether. But the notice is not for the benefit of the grantor in the sense of notice to him. It is only for his benefit by giving notoriety and publicity of the time, the terms, and the place of sale, and of the property to be sold that bidders may be invited, competition encouraged, and a fair price obtained for the property. As to the grantor, he is presumed to know that he is in default and his property liable to sale at any time, and no notice to him is required.

The case was distinguished from that of Dean *v.* Nelson (1869), 10 Wall. 158, 19 L. ed. 926, as follows. If the present had been a sale under judicial order, that case would bear some analogy to this, and some expressions in the opinion more general than was intended may, as this court has already said, tend to mislead. That case was a proceeding within an insurrectionary district, but held by our military forces, in a court established by military orders alone. It was a proceeding to foreclose a mortgage on personal property, and it was instituted against parties who had been expelled by military force from their residence, and who were forbidden absolutely by the order which expelled them, and which was addressed to them by name from coming back again within the lines of the military authority which organized the court. Inasmuch as, without their consent and against their will, they were thus driven from their homes, and forbidden to return by the arbitrary though probably necessary act of the military power, we held that a judicial decree by which their property was sold during the continuance in force of this order was void as to them. To that doctrine we adhere, and have repeated it at this term in the case of Lasere *v.* Rochereau (1873), 17 Wall. 437, 21 L. ed. 694. But this court has never decided nor intentionally given expression to the idea that the property of citizens of the rebel States, located in the loyal States, was, by the mere existence of the war, exempted from judicial process for debts due to citizens of the loyal States contracted before the war. A proposition like this, which gives an immunity to rebels against the government not accorded to the soldier who is fighting for that government, in the very locality where the other resides, must receive the gravest consideration and be supported by unquestioned weight of authority before it receives our assent. Its tendency is to make the very debts which the citizens of one section may owe to another an inducement to revolution and insurrection, and it rewards the man who lifts his hands against his government by protection to his property, which it would not otherwise possess, if he can raise his efforts to the dignity of a civil war." It is to be noted that much stress was laid in the opinion of Mr. Justice Miller on the fact that any other view would be granting a favor to citizens who were in rebellion.

The view of the United States Supreme Court was followed by the Maryland court in Dorsey *v.* Dorsey (1869), 30 Md. 522 [overruled in Johnson *v.* Robertson (1870), 34 Md. 165], where Miller, J., says: "The exact question here presented is, can a citizen of this State enforce the laws of the State in the courts of the State, so as to subject the real estate of a nonresident enemy, situated in the State, to the payment of a debt contracted before the war began and secured by a mortgage on the property itself, executed and recorded here, whilst the debtor himself was a resident of the State, or, in other words, can war have the effect of suspending in favor of a non-resident enemy and to the prejudice of a resident and friendly creditor, our own laws passed for the purpose of enabling our own courts to sell for payment of debts the property of non-residents situated in the State, held under and subject to its laws and within the jurisdiction of its courts? The argument in favor of the appellant, stated in its strongest light, is this: The object of the order of publication, made under the law affecting an absent or non-resident defendant, is to notify and warn him to appear by a certain day in court and defend his rights;

that no man can have those rights impaired in any court without an opportunity of so defending them, and no court has jurisdiction over them until it has afforded him such opportunity; that the notice thus given is equivalent to personal notice by the service of a writ, and all proceedings are void unless one notice or the other is given; that whilst war exists the notice by order of publication is utterly futile and unlawful, all intercourse between the citizens of the respective governments being prohibited; that it could not possibly reach the party for whom it was intended, because no communication could be had between the place of publication and the place where the party intended to be notified, resided at the time; and even if by legal possibility such notice could reach him, still, being an enemy, he could not appear and defend; the notice, therefore, in this case was a notice which could not possibly reach the appellant, requiring him to do a thing which he could not possibly perform—a notice impossible to be known, to do a thing impossible to be done—and such an order of publication must by consequence be utterly futile, illegal, and void. But a brief examination of the provisions, purpose and object of the law relating to non-resident owners of property here situated, who are made defendants in chancery suits in this State affecting such property will, we think, afford a sufficient answer to this argument. All that the law requires in such cases is that the court shall order notice to be given by publication in one or more newspapers, stating the substance and object of the bill, and warning the non-resident to appear on or before a day fixed in its order, and show cause why the relief prayed should not be granted, such notice to be published as the court may direct, but not less than once a week for four successive weeks, three months before the day fixed by the order for the appearance of the party, and if he does not appear at the time stated, the court is then authorized to proceed in the case by passing a decree *pro confesso*, or taking testimony *ex parte*, and then to final decree upon the subject-matter. The law applies to all non-residents wherever they may reside, and the order is passed upon the mere allegation of the bill that the defendant is a non-resident, without stating his place of actual abode, which, in many, if not a majority of cases, is unknown either to the complainant or the court. It is to be passed by the court and published, and when these things are done full authority is given to proceed to decree without regard to the fact, whether the notice was ever seen by the defendant or not, and without reference to the possibility of its reaching him, or of his ability to appear in compliance with the warning it contains. Strict compliance with the requisites of the statute is demanded; but when this is done and the case has proceeded to final decree, the property sold, and title acquired thereunder, the courts will not listen to any evidence that the party has not or could not actually receive the notice, or make his appearance. It is simply a statutory mode of conferring upon the court power to pass judgment on property, the subject-matter of suit within its jurisdiction when the owner is beyond the reach of its process. The courts in such cases act upon the presumption of notice which they will not allow to be rebutted. The whole theory of the law of constructive notice rests upon this foundation. In numerous cases an equal impossibility of receiving and complying with the notice exists as in the case of war. A party may be sick or imprisoned in a distant land at such place and under such circumstances that within the time limited no notice could by any possibility reach him; but this or any other *vis major*, or act of God, will not oust the jurisdiction of the court over his property once obtained by pursuing the requirements of the statute, or defeat the title acquired under its final decree thereon. If war and residence in enemy's territory can be set up to avoid the proceedings and defeat the title, there is no good reason why any other cause creating an equal impossibility of receiving notice should not be allowed to have the same effect. This would defeat the very object of the law, embarrass judicial proceedings, and render insecure titles derived under judicial sales. After a careful consideration of the question, we are forced to the conclusion that the existence of the war furnishes no ground for impeaching the jurisdiction of the court and disturbing the title of the purchaser acquired in this case. Neither the contract nor the remedy upon it was suspended, because there was no necessity to resort to the enemy's courts to enforce it against the mortgaged property."

Similar views are expressed by the Missouri courts. The leading case is De Jarnette *v.* De Giverville (1874), 56 Mo. 440, in which Wagner, J., says: "There is another aspect in which this case must be considered, and which really presents the principal point, and upon which I would have been satisfied to have placed it. . . . The sale was made under a deed of trust containing an agreement that in default of payment when the notes matured, the trustee upon giving the requisite notice should proceed to sell the property to satisfy the debt. It contained a power coupled with an interest which was irrevocable in its character, and when the contingency arose calling forth its execution, the trustee was authorized to execute it regardless of the status of the grantors at the particular time. So far as the authority of the trustee was concerned to go on and make a sale of the property in satisfaction of the debt, it made no difference whether the grantors were in the Confederate lines or in the jungles of India, or even if they were dead. It may be conceded that they were in a place or in a condition where it was physically impossible for notice to reach them, but that would not alter the case, as the notice was not designed to be given for their benefit in the sense of notice to them. It was intended to notify the community that the sale would take place in order that bidders might be present to purchase the property." Napton and Adams, JJ., dissented.

This rule was followed in Black *v.* Gregg (1875), 58 Mo. 565, two judges dissenting, and in Martin *v.* Paxson (1877), 66 Mo. 260. In the latter case, the debtor voluntarily left Missouri after the debt became due. Hough, J., says: "In the present case both parties were citizens of the State of Missouri and remained so for a considerable period after the maturity of the note. No public law forbade the payment of money, and the plaintiff long after it became due placed himself within the Confederate lines, and beyond the reach of notice. There being no legal impediment to the payment of the debt, the default gave the trustee power to sell, after giving a certain notice. That notice was to be given in a manner agreed upon by the parties; it was absolute and unconditional in its terms, and its sufficiency was not to be determined by the place of residence of the trustor, or his ability to receive or be made cognizant of such notice at the time it should be given. Upon default, and the giving of the notice provided for, the trustee was authorized to sell." Even where the trustor resided within the Confederate States when the debt became due and the property was sold a sale was upheld. Mitchell *v.* Nodaway County (1883), 80 Mo. 257.

The Illinois decisions are also in accord with the doctrine announced in University *v.* Finch: Mixer *v.* Sibley (1869), 53 Ill. 61; Willard *v.* Boggs (1870), 56 Ill. 163; Harper *v.* Ely (1870), 56 Ill. 179; Seymour *v.* Bailey (1872), 66 Ill. 288; Bush *v.* Sherman (1875), 80 Ill. 165.

There are decisions of equal authority upholding the contrary view. In Dean *v.* Nelson (1869), 10 Wall. 158, 19 L. ed. 926, it was held that where a mortgage had been given, the equity of redemption is not extinguished by proceedings to foreclose the same during war, if such proceedings were taken within the United States while the defendant, who was served by publication, was absent in the Confederate lines, having been expelled by the military authorities. Accord: Lasere *v.* Rochereau (1873), 17 Wall. 437, 21 L. ed. 694.

The leading case denying the right to foreclose during the pendency of hostilities is that of the Kanawha Coal Co. *v.* The Kanawha and Ohio Coal Co. (1870), 7 Blatch. 391, F. C. No. 7606. This was a bill in equity to redeem certain tracks of land which were the subject of a deed of trust in the nature of a mortgage and which had been sold under foreclosure proceedings. The deed of trust had been given prior to the outbreak of the Civil War by debtors then and subsequently resident within the Southern States. An injunction had been granted restraining the sale under the deed of trust, and this injunction was continued in force until December, 1863. Subsequent to the last mentioned date and in the execution of the power of sale given to the trustees, proceedings for foreclosure were had upon publication of a notice in the newspapers in accordance with the provisions of the deed of trust. The main ground urged on the part of the plaintiffs in support of the relief sought was that the power of sale under the deed of trust was suspended by the injunction until December, 1863, and that therefore, up to that date, there was no default and that from the time that the injunction was dissolved until a time subsequent to the sale under the deed of trust, the debtors were domiciled and resident in the territory of the Confederacy and that the proceedings taken in February, 1864, to enforce the payment by a sale of the land under the deed of trust were illegal and void, that no title passed to the purchasers under such proceedings and that, therefore, the debtors were not barred or foreclosed of their equity to redemption.

Judge Blatchford said: "The proceeding taken in February, 1864, to sell the land under the deed of trust, was a proceeding by Edwards, as creditor, to enforce payment of a debt due to him by Thompson, Dandridge, Hunter and Maury, as debtors. The enforcement was, indeed, not by a judgment that the debtors personally pay the debt to the creditor, but was by a sale of land which the debtors had specifically put in trust to pay the debt. Nevertheless, the foundation of the proceeding was, that the debt existed and that the debtors had not discharged it. The duties and rights of the debtors and the creditor were correlative. The right which the creditor undertook to exercise, by enforcing a sale of the land, was the right to compel the discharge of the debt *in invitum* by that means, so far as the proceeds of the sale would go. That right could not exist in favor of the creditor, unless there existed at the same time a corresponding duty and capacity on the part of the debtors to pay the debt to the creditor. . . . There can be no doubt, that if, on the dissolution of the injunction obtained by Thompson and others, as debtors, against Edwards, as creditor, Edwards had notified the debtors of the fact, and required them to pay the debt to him within a certain time, under pain of having the land sold if the debt were not paid, the payment of the debt by them to Edwards would have been business and commercial intercourse, and, therefore, unlawful. How, then, can this penalty be enforced against them, for not doing what it was unlawful for them to do? The proposition need only be stated to carry with it its own answer. No such proceeding can be upheld. The remedy for the recovery of the debt in this case by a sale of the trust land was suspended during the war. . . . In the present case, the trust deed provided, that, in case of any sale of the trust lands by the trustees under the deed of trust, they should give at least sixty days' notice of the time and place of sale. The object of this notice must be held to have been to apprise the debtors that the creditor was about to sell the land, and that they must pay the debt and thus redeem the land and stop the sale within the sixty days. The presumption must be, either that the debtors saw the notice which the trustees published, or that they did not see it. If the presumption be that they saw it, they could only have seen it by means of an unlawful intercourse which this court cannot sanction. If the presumption be that they did not see it, because, by reason of hostilities, it could not reach them, it would be a fraud on them to uphold a sale made on a notice so given. A notice was made indispensable by the terms of the contract, and was necessary to be given, not only as a condition precedent to any right of the trustees to sell, but as affording time to the debtors to pay the debt and thus save the land from sale, on the presumption that they would see the notice on its being given, under circumstances where it was lawful for it to pass as a communication from the trustees to the debtors. . . . The right of action that is suspended must include the right to resort to any species of proceedings, judicial or otherwise, to enforce the contract. . . . As it was unlawful for the debtors to pay the debt to their enemy creditor during the war, it would be subversive of the first principles of justice to permit the creditor at the same time to enforce the payment of the debt by a sale of the land—especially so, when the debtors were, by the terms of the contract, entitled to a notice of sixty days, which it was unlawful for them to receive, or for the trustees to give to them. The proceedings in respect of the sale were void. Edwards acquired no title under it to the land, as against the debtors, and their grantees of the equity of redemption, the plaintiffs; and the defendants acquired no title to the land from Edwards, as against the same parties. The right of the debtors and of the plaintiffs to redeem the land from the lien or incumbrance of the deed of trust, by paying the debt secured thereby, remains, notwithstanding the attempted sale under the deed of trust. Such right stands in the same condition as if there had been no such attempted sale. Such sale is of itself no defense to the right of the plaintiffs to exercise such right of redemption."

The doctrine of the Kanawha Coal Company case was followed in Walker *v.* Beauchler (1876), 27 Gratt. (Va.) 511, where Staples, J., holding that a deed of trust could not be enforced against a non-resident alien enemy, and that a sale under such proceedings was invalid, said: "It was unlawful for the debtor to pay, it was unlawful for the creditor to receive. It was unlawful for them to have any intercourse, communication, or correspondence, whatever, upon any subject or for any purpose. The operation of the contract during the war was as completely suspended as though it had never had any existence. . . . Applying these principles to the case in hand, it follows, that the appellee, residing within the Confederate lines of occupation, could not lawfully pay the appellant residing within the Federal lines. He was positively interdicted from making such payment by the laws of his country and by the laws of nations. How then could the trust deed be enforced? A sale under that deed was founded on the supposed default of the debtor. But there can be no default, where the debtor is prohibited from paying and the creditor from receiving. . . . These positions of the learned Judge (Blatchford, in Kanawha Coal Company case) are supported by a number of cases cited in his opinion, and by a force of reasoning which appears to be unanswerable. The Supreme Court of the United States has, however, decided differently. In the case of University *v.* Finch (1873), 18 Wall. 106, the court held that a sale was valid made by a trustee during the war under a trust deed executed before. . . . The learned Justice (Mr. Justice Miller) loses sight of the principle that the deed of trust is a mere security for the debt, and that the authority of the trustee to sell results only from the default of the debtor. No one will maintain that the creditor could enforce a sale of his debtor's property while the latter is prohibited by injunction or process of garnishment from making the payment. The prohibition arising from a state of war is much more stringent: for in the latter case the debtor is not only forbidden by positive law, but by the highest obligations of duty and patriotism from holding any communication with his creditor. The injustice of selling the property of the debtor to satisfy a debt which he is prohibited by law from paying is too palpable to admit of justification. The debtor's right to redeem his estate is commensurate with that of the creditor to make the sale. If the one is suspended, justice and reason require that the other shall not be exercised." Commenting on the argument of Mr. Justice Miller, he says: "If the position of the parties in University *v.* Finch had been reversed and the estate of a loyal debtor had been sold, the argument of the learned Judge must of necessity have been very different. . . . As the creditor is forbid to receive, and the debtor to pay, by a supreme power, each is therefore relieved from all the penalties, forfeitures, and damages incident to the non-enforcement and the non-performance of the contract."

In Grinnan *v.* Edwards (1883), 21 W. Va. 347, it is said, per Woods, J.: "We are upon principle and authority constrained to hold, that where a judicial proceeding has been instituted against any person affecting his life, liberty, or property, and such person has been prohibited by competent authority, from appearing in said court, and making defense to such judicial proceeding, that a judgment or decree rendered therein against him, is wholly inoperative and void, and being void it is in legal effect, no judgment. . . . In the case at bar, the said plaintiffs at the making of said purchase on the 15th October, 1860, all resided in that part of Virginia lying east of the Allegheny Mountains, and there they continued to reside during the whole period of the war. By the existence of the war, they and the said Edwards became legal enemies to each other, before said unpaid purchase-money became due. The plaintiffs lived in the territory of one belligerent, and the said Edwards, in the territory of the other; the plaintiffs dare not cross the military lines of the United States. They were, by the law of nations, as well as by the laws of Congress, and the proclamations of the President of the United States, expressly forbidden to do so, and all intercourse was prohibited, and therefore unlawful. When they were sued by said Edwards in the circuit court of Kanawha county, they were notified by order of publication and warned to appear and make defense; the laws of the United States prohibited them from doing so in person, and we have seen they could not appoint an attorney or agent to appear for them; it was unlawful for them to obey such order of publication, or even to see it; and to crown all, and make their disabilities absolutely insurmountable, the convention sitting at Wheeling to re-organize the State government of Virginia, by an ordinance passed the 19th of June, 1861, 'To authorize the apprehending of suspicious persons in time of war,' empowered the Governor to cause to be apprehended and secured, or to compel to depart the State, all suspicious persons of any foreign State or power at war with the United States; and thereby declared in effect, that all persons residing in Virginia, adhering to, and supporting the convention at Richmond or professing allegiance or obedience to the same, were 'citizens of foreign States at war with the United States'—in fact were alien enemies—and were liable to be arrested on the warrant of the Governor, and either imprisoned or exiled. By an act of the General Assembly of the restored government of Virginia passed on the 4th of February, 1862, it was in substance enacted that during the existence of the war, it should be lawful for the jailer of any county to receive into his jail and there safely keep 'any person whatever, who might be delivered to him by the written order of the Governor, or of any military officer of the United States, without warrant, precept, or commitment, until discharged under the laws of the United States, or by the Governor, or by the officer by whose order such persons were confined, or by an order from an officer of superior rank.' With all these disabilities imposed, and all these perils to life, liberty, and property impending, it would have been folly and madness for the plaintiffs Grinnan, Abigail H. Smith, or said Wm. K. Smith to have attempted to appear, and defend their interests in the said suit brought against them by said Edwards, in the circuit court of Kanawha county. We therefore hold, that the said disabilities and prohibitions, operating on said Grinnan, William K. Smith and his wife said Abigail H. Smith, effectually prevented them from appearing, and making their defense to the said suit brought against them in the circuit court of Kanawha county, and that the same will be treated as a denial of their right to appear and make such defense, and as equivalent to striking out their appearance and defense, after the same had in fact been made; and that therefore, the said decrees, rendered by the circuit court of Kanawha in favor of said Wm. H. Edwards, in his said suit against said Grinnan, Wm. K. Smith and Abigail H. Smith, and all proceedings under the same, are null and void, and that the same shall not in any wise impair the right of the plaintiffs to enforce the specific execution of said contract for the purchase of said five thousand acres of land."

To the same effect is Haymond *v.* Camden (1883), 22 W. Va. 180 (per Snyder, J.): "The law cannot create a default when it forbids a performance. The injustice of attaching and selling the property of debtors for a debt, which they are forbidden by law to pay, is too obvious to admit of question or justification. Their right to pay the debt and release their property is commensurate with that of the creditor to enforce his lien or attach and sell the property. If the one is suspended by law, justice and reason as well as the law require that the other should not be exercised." See also Johnson *v.* Robertson (1870), 34 Md. 165, overruling Dorsey *v.* Dorsey (1868), 30 Md. 522; Conn. Mutual Life Insurance Co. *v.* Hall (1868), 7 Am. L. Reg. (N. S.) 606. See also dissenting opinion of Napton, J., in De Jarnette *v.* De Giverville (1874), 56 Mo. 440. For an exhaustive consideration of the entire question, see article by Maury, in 14 Am. L. Reg. (N. S.) 129.

"Contract . . . the terms of which provide for a termination upon notice or for acceleration of maturity."

The notice in these cases is to be served upon, or the presentation made to, or the demand made upon, the Alien Property Custodian, and such act is given the same effect as if made upon the enemy or ally of enemy personally.

" If . . . a surplus shall remain, etc."

The Act provides that notice of any property held by way of surplus after satisfaction of the claim, shall be given to the President. Cp. section 7 (a). By Executive Order of October 12, 1917, the executive administration of this section is vested in the Alien Property Custodian.

Abrogation of enemy contracts.

(b) That any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States, and an enemy or ally of an enemy, the terms of which provide for the delivery, during or after any war in which a present enemy or ally of enemy nation has been or is now engaged, of anything produced, mined, or manufactured in the United States, may be abrogated by such citizen or corporation by serving thirty days' notice in writing upon the Alien Property Custodian of his or its election to abrogate such contract.

As to rights of assignees, see section 7 (b).

" Any contract."

The place of making or of performance is immaterial—a contract for delivery during or after the war of property of the nature indicated, even where such property was at the time of entering into the contract in a foreign country and was to be performed there, is within the terms of the provision. So also, it is immaterial whether the contract has been completely or partially performed on the part of the buyer by payment of the whole or a part of the purchase price, or remains executory as to both parties.

" Entered into prior to the beginning of the war."

The contract must have been entered into prior to midnight of April 6, 1917. Contracts entered into within the United States after April 6, 1917, with any person who at common law, became an alien enemy by virtue of the declaration of a state of war between the United States and the German Empire are void, *supra*, p. 109. Contracts entered into between April 6, 1917, and October 6, 1917, with persons who at common law are not alien enemies (e. g., persons resident in Austria) are not void, and may not be abrogated under this section of the Act. See *supra*, p. 109. They are subject to the ordinary rules governing executory contracts, discussed *infra*.

" Between any citizen of the United States or any corporation organized within the United States."

One of the parties thereto must be a citizen of the United States or an American corporation. The provision does not, as is the case with some of the annulment of contract laws of the European countries at war with the Central Powers, extend to the citizens or subjects of other states. Nor does it extend to cases where a contract was originally entered into by an alien of any nationality, and has been assigned to an American citizen or corporation, provided the assignment was made prior to April 7, 1917. The domicile or residence of the citizen is immaterial.

" Enemy or ally of enemy."

These terms are defined in section 2. See commentary thereto.

" The terms of which provide for the delivery, during or after any war in which a present enemy or ally of enemy nation has been or is now engaged."

It is essential that the contract provide for delivery. Where part delivery has been made there can be no action for recovery of such part. "Present" enemy or ally of enemy refers only to such states as were in that position on October 6, 1917, i. e., to the German Empire, Austria-Hungary, Bulgaria, and Turkey. It does not apply to countries that may hereafter come into the category of enemy or ally of enemy states.

" In the United States."

For meaning of "United States" see section 2. The subject-matter of the contract must be produced, mined or manufactured in the United States. An executory contract relating to anything produced, mined, or manufactured outside the United States is subject to the general rules governing the effect of war on this class of contracts, more fully discussed below.

" May be abrogated, etc."

Contracts of the nature indicated may be abrogated at the instance of the American citizen or corporation, a party thereto. They may be so abrogated at any time; but when notice of abrogation is served in the manner indicated by the Act the election is final and the contract is terminated as to all parties.

Any moneys or property received in payment are held on behalf of the enemy or ally of enemy and must be reported to Alien Property Custodian under section 7 (a), and be dealt with under the Act.

The service upon the Alien Property Custodian terminates the contract. The Custodian has no power to investigate the merits of the case. The practice in England and in some of the other Allied countries is different.

That this provision in so far as it is not nugatory as relating to executory contracts, terminated by the outbreak of the war (see *infra*) is not in line with the general theory of the bill, is clear. In the discussion of this provision before the Senate Sub-Committee (Hearings before the Sub-Committee—on H. R. 4960, pages 161, 177–183) the Assistant Attorney-General, Mr. Warren, said: "The amendment that they (the parties desiring the incorporation of this clause) originally drafted was not adequate, and I suggested some changes in it, which they have embodied here, which were absolutely necessary, if the amendment was advisable at all. I told them that I would not agree to the amendment, but that I would not oppose it before the committee; that I did not feel I could agree to it, for this reason, that this bill scrupulously avoids in any way confiscating property. Now, the proposed amendment provides that where a contract was entered into prior to the war which called for the delivery of property after the war, it might be cancelled by the United States citizen. If that contract is a contract which, under the general doctrine of law, is now in existence anyway, its cancellation, of course, is just as much confiscation of the property of the German as if you took his goods. That is, if he has a good, valid contract now for so many bales of cotton to be delivered in Charleston after the war, if you invalidate the contract, you forfeit the German's property right. That is not in line with the general theory of the bill. On the other hand, if the contract is not now a valid, existing contract, then the provision is entirely unnecessary."

The clause was not debated in Congress. For the provisions of the German law relating to the annulment of contracts subsisting between German subjects and alien enemies, see article by Richard King, in 2 International Law Notes, 5.

Effect of war on executory contracts.

There are numerous dicta to the effect that the outbreak of war dissolves all commercial contracts existing with persons who became alien enemies. This general doctrine, however, finds no support in the actual decisions. In fact the authorities are overwhelmingly the other way, and regard such contracts, not wholly executory, as merely suspended, unless they fall within one or more of the classes discussed below. There are even expressions to the effect that commercial contracts that are wholly executory are not necessarily annulled by war.

Where the effect of the outbreak of the war is to annul, the contract is annulled as of the date of the declaration of war, and as to all parties thereto.

In the application of this doctrine in the United States during the present war, a sharp distinction must be made between contracts existing with persons who at common law became alien enemies by the declaration of a state of war with the German Empire on April 6, 1917, and contracts with persons who became enemies or allies of enemy under the Act on October 6, 1917. This point is more fully considered in connection with its application to particular contracts, *infra*.

The general doctrine is that set forth by Simrall, J., in Statham *v.* New York Life Insurance Co. (1871), 45 Miss. 581, 7 Am. Rep. 737: "As a general proposition, war suspends the performance of *ante bellum* contracts, and denounces as illegal and invalid those made *pendente bello*. If an *ante bellum* contract is dissolved at all, it is because its performance is inconsistent with the duties and allegiance which the parties owe to their respective countries, and involves some violation or infringement of these, and which has not been performed in whole or in part by either party. The annihilation of such a contract would not be injurious to either party, but would rather dissolve their inconvenient relations. But if the contract has been partly executed by one party, by parting with money or other valuable things, on the consideration and promise that the other will perform his part of the engagement, it would be gross injustice and repugnant to reason that intervening war should destroy the contract, devolving all the loss upon one party to the gain of the other. Nor should that be so unless an overruling policy should so require, such as to continue the contract in force, or to attempt its performance, would necessitate intercourse, commerce, or the exchange of money or property between the respective parties, which would be inconsistent with their changed relations superinduced by the war. If the contract may be preserved or performed without the transmission of money or property from one enemy to the other, or without their intercourse or correspondence, then no principle of law or policy, arising out of a state of war between their respective countries, would demand an abrogation of the contract, or its non-performance. Reason is the life of the law, and when it ceases the law itself dies."

In Williams *v.* Paine (1895), 7 App. Cas. (D. C.) 116, per Alvey, C. J., it was said: "It is well settled that the occurrence of war between the states or nations to which the respective parties belong does not necessarily annul and destroy all prior contracts subsisting between such parties. It is true, all trade and private business intercourse, between the citizens or residents of the one belligerent state or nation with those of the other belligerent state or nation is illegal and therefore void. But this principle is not so general and extensive as to include all contracts and engagements entered into before the war. There are some prior contracts that, from their very nature, the subsequent occurrence of war will avoid; but those are contracts that necessarily require intercourse and communication between the citizens of the belligerent states, in order to the due performance of such contracts. In such cases, both upon principles that are universally observed and enforced as between belligerents, and as matter of necessity, the contracts are vacated by the occurrence of war between the states to which the different parties belong, because they cannot be performed, consistently with law."

"There is no reason why *ante bellum* contracts, not entirely executory, should not be preserved from dissolution, to the extent that they are not inconsistent with the duties and requirements of a condition of hostilities. The test to dissolve a pre-existing contract is its essential antagonism to the state of war. . . . The tendency of adjudication is to preserve and not to destroy prëexisting contracts. Where performance can be had, without contravening the laws of war, the existence of the contract is not imperiled, and even if performance is impossible the contract may still, when partly executed, be preserved by engrafting necessary qualifications upon it, or suspending its impossible provisions, if made so by the act of the law. If the contract in question can be saved while the war lasts, it should be." Bedle, J., in Mutual Benefit Life Insurance Co. *v.* Hillyard (1874), 37 N. J. L. 444, 18 Am. Rep. 741.

The following classes of contracts are annulled, and not merely suspended:

1. Contracts requiring uninterrupted intercourse between the parties. "Executory contracts with an alien enemy, or even with a neutral, if they cannot be performed except in the way of commercial intercourse with the enemy, are dissolved by the declaration of war, which operates for that purpose with a force equivalent to an act of Congress." Clifford, J., in Hanger *v.* Abbott (1867), 6 Wall. 532, 18 L. ed. 939. See also, Esposito *v.* Bowden (1857), 7 Ellis & B. 763; Janson *v.* Driefontein Consolidated Mines [1902] A. C. 484, 509; Duncan Fox & Co. *v.* Schrempft & Bonke [1915] 1 K. B. 365.

2. Contracts, the continued existence of which is against public policy. "It is not competent to any subject to enter into a contract to do anything which may be detrimental to the interests of his own country." Lord Alvanley, C. J., in Furtado *v.* Rogers (1802), 3 Bos. & P. 191. Therefore, a contract involving a violation of the duties of allegiance is dissolved. Statham *v.* New York Life Insurance Co. (1871), 45 Misc. 581, 7 Am. Rep. 737. For the same reason contracts of marine insurance are held to be annulled in so far as they insure against capture by the government of the insurer. Applying this rule, it was laid down in Robson *v.* Premier Oil and Pipe Line Co. [1915] 2 Ch. 124, 136, that a transaction between an alien enemy and a British subject which might result in detriment to Great Britain or advantage to the enemy came within the principle upon which intercourse is prohibited, namely, that of public policy. See also Bray, J., in Tingley *v.* Müller [1917] 2 Ch. 144; Zinc Corporation *v.* Hirsch [1916] 1 K. B. 541.

3. Contracts where time is of the essence of the agreement. Thus, in New York Life Insurance Co. *v.* Statham (1876), 93 U. S. 24, 24 L. ed. 789, per Bradley, J.: "The case, therefore, is one in which time is material and of the essence of the contract. Non-payment at the day involves absolute forfeiture, if such be the terms of the contract, as is the case here. Courts cannot with safety vary the stipulation of the parties by introducing equities for the relief of the insured against their own negligence."

Time may be of the essence of the contract either under its express terms or from the circumstances of the case, as for example, in an agreement to sell perishable goods or an interest in property of a speculative or wasting nature. Trotter (Supp.) 60.

4. Contracts a revival of which after the war would be inequitable to either party. "Where cessation of performance for an indefinite time means commercially speaking, the end of the contract, they (the courts) treat it as dissolved, but where such an interruption of performance does not go to the root of the business then they treat the contract as suspended." Scott, Trading with the Enemy (2d ed.), 12. "The doctrine of the revival of contracts suspended during the war, is one based on considerations of equity and justice and cannot be invoked to revive a contract which it would be unjust or inequitable to revive." Per Bradley, J., in New York Life Insurance Co. *v.* Statham (1876), 93 U. S. 24, 24 L. ed. 789. A contract is suspended only where the suspension does not involve making a new agreement between the parties. Distington Haematite Iron Co. *v.* Possehl & Co. [1916] 1 K. B. 811.

An executory contract between persons who become separated by the line of war, may, of course, be terminated by circumstances such as would terminate a contract between persons not so separated, and the ground of termination may be the existence of a state of war.

War may dissolve an implied contract by rendering its fulfilment impossible and also dissolves an express unconditional contract, which it makes impossible of performance by either party. Trotter (Supp.) 78.

In this connection it is important to consider the doctrine of Taylor *v.* Caldwell (1863), 3 B. & S. 826, quoted below, and which was subsequently greatly extended, especially in the so-called "Coronation Cases": Krell *v.* Henry [1903] 2 K. B. 740; Civil Service Co-operative Society *v.* General Steam Navigation Co. [1903] 2 K. B. 756; Blakeley *v.* Muller & Co. [1903] 2 K. B. 760n; Herne Bay Steamboat Co. *v.* Hutton [1903] 2 K. B. 683; Chandler *v.* Webster [1904] 1 K. B. 493. The "Coronation Cases" were a series of cases growing out of contracts entered into relying upon the taking place of the King's coronation ceremonies, which, however, did not take place on account of the King's illness.

In Krell *v.* Henry [1903] 2 K. B. 740, an action was brought by a landlord for the rent of a room hired by sight-seers and which had not been used owing to the coronation ceremonies not taking place. The court held that the plaintiff was not entitled to recover the rent. Vaughn Williams, L. J., said: "The real question in this case is the extent of the application in English law of the principle of the Roman law which has been adopted and acted on in many English decisions, and notably in the case of Taylor *v.* Caldwell (1863), 3 B. & S. 826. That case at least makes it clear that 'where, from the nature of the contract, it appears that the parties must from the beginning have known that it could not be fulfilled unless, when the time for the fulfilment of the contract arrived, some particular specified thing continued to exist, so that when entering into the contract they must have contemplated such continued existence as the foundation of what was to be done; there, in the absence of any express or implied warranty that the thing shall exist, the contract is not to be considered a positive contract, but as subject to an implied condition that the parties shall be excused in case, before breach, performance becomes impossible from the perishing of the thing without default of the contractor.' Thus far it is clear that the principle of the Roman law has been introduced into the English law. The doubt in the present case arises as to how far this principle extends. The Roman law dealt with obligations *de certo corpore.* Whatever may have been the limits of the Roman law, the case of Nickoll *v.* Ashton [1901] 2 K. B. 126, makes it plain that the English law applies the principle not only to cases where the performance of the contract becomes impossible by the cessation of existence of the thing which is the subject-matter of the contract, but also to cases where the event which renders the contract incapable of performance is the cessation or non-existence of an express condition or state of things, going to the root of the contract, and essential to its performance. It is said, on the one side, that the specified thing, state of things, or condition the continued existence of which is necessary for the fulfilment of the contract, so that the parties entering into the contract must have contemplated the continued existence of that thing, condition, or state of things as the foundation of what was to be done under the contract, is limited to things which are either the subject-matter of the contract or a condition or state of things, present or anticipated, which is expressly mentioned in the contract. But, on the other side, it is said that the condition or state of things need not be expressly specified, but that it is sufficient if that condition or state of things clearly appears by extrinsic evidence to have been assumed by the parties to be the foundation or basis of the contract, and the event which causes the impossibility is of such a character that it cannot reasonably be supposed to have been in the contemplation of the contracting parties when the contract was made. In such a case the contracting parties will not be held bound by the general words which, though large enough to include, were not used with reference to a possibility of a particular event rendering performance of the contract impossible. I do not think that the principle of the civil law as introduced into the English law is limited to cases in which the event causing the impossibility of performance is the destruction or non-existence of some thing which is the subject-matter of the contract or some condition or state of things expressly specified as a condition of it. I think that you first have to ascertain, not necessarily from the terms of the contract, but, if required, from necessary inferences, drawn from surrounding circumstances recognized by both contracting parties, what is the substance of the contract, and then to ask the question whether that substantial contract needs for its foundation the assumption of the existence of a particular state of things. If it does, this will limit the operation of the general words, and in such case, if the contract becomes impossible of performance by reason of the non-existence of the state of things assumed by both contracting parties as the foundation of the contract, there will be no breach of the contract thus limited." The language of this case was approved in Horlock *v.* Beal [1916] 1 A. C. 486. See also Lindenberger Co. *v.* Lindenberger (1916), 235 Fed. 542.

Affreightment.

Contracts of affreightment are dissolved by war, and this rule applies both to time charters and to charters for a designated voyage. It was suggested by Pollock, C. B., in Esposito *v.* Bowden (1857), 7 Ellis & B. 763, that the case of war is an exception implied in the contract, as the termination of life is an exception implied in many other contracts. In Barrick *v.* Buba (1857), 2 C. B. (N. S.) 563, it was held that as a declaration of war by one power against a foreign power, imports a prohibition of commercial intercourse with the subject, of that power, therefore, a plea to an action upon a charter party made between a British subject and a Russian subject carrying on trade in Russia, for loading a cargo at Odessa, a Russian port, on board a British vessel, and where, before the expiration of the time for the defendant to load the vessel according to the charter party, and before any breach thereof, a state of war existed, and had ever since existed, between the two countries, was a good answer. So also: Barker *v.* Hodgson (1814), 3 M. & S. 267; Atkinson *v.* Ritchie (1809), 10 East, 530; Avery *v.* Bowden (1857), 5 Ellis & B. 714.

In Clemontson *v.* Blessig (1855), 11 Exch. 135, war had been declared by England against Russia, but there was an order of council passed that Russian merchant vessels, in British ports or places should be allowed six weeks for loading their cargoes and departing; and that such Russian merchant vessels, if met at sea by British ships, should be permitted to continue their voyage, if, upon examination of their papers, it should appear that their cargoes were taken on board before the expiration of the above period. An order had been sent to the plaintiff in England to ship goods to the defendant in Russia, and the defendant promised in payment of the goods to accept the plaintiff's draft for the price. In an action for not accepting, the defendant pleaded that, before the goods were shipped, war was declared, which rendered the contract illegal. The plaintiff filed a replication setting forth the order of council, and averred that the goods were shipped before the expiration of the six weeks. On demurrer the court held that the contract was not dissolved by the war. But it is to be noted that by the terms of the declaration of war the performance was permitted. Esposito *v.* Bowden (1857), 7 Ellis & B. 763.

The leading case is Esposito *v.* Bowden (1857), 7 Ellis & B. 763. Although this was a charter party between a British subject and a neutral, what is therein set forth applies with even greater force where the contract is with an alien enemy. The principal question in the case was "whether a charter party made before the late Russian war between an English merchant and a neutral shipowner, whereby it was agreed that the neutral vessel should proceed to Odessa, a port of Russia, and there load from the freighter's factors a complete cargo of wheat, seed, or other grain, and proceed therewith to Falmouth, with usual provisions as to laying days and demurrage, was dissolved by the war between England

and Russia, alleged by the charterer in his plea, which is to be taken as true for the purpose of the present discussion, to have broken out before the vessel arrived at Odessa, and to have continued up to and during the time when the loading was to have taken place; it being further alleged in the plea that, from the time war was declared, it became and was impossible for the charterer to perform his agreement without dealing and trading with the Queen's enemies. It is now fully established that, the presumed object of war being as much to cripple the enemy's commerce as to capture his property, a declaration of war imports a prohibition of commercial intercourse and correspondence with the inhabitants of the enemy's country, and that such intercourse, except with the license of the Crown, is illegal. Doubt was thrown upon the law on this subject by the case of Bell *v.* Gibson, 1798, 1 Bos. & P. 345, where Buller and Heath, Js. (Rooke, J., *dissentiente*), held that an insurance of goods purchased in Holland during hostilities between England and Holland on board a neutral ship was lawful. That case, however, was, in the year 1800, overruled, Lord Kenyon being Chief Justice, by the Court of King's Bench in Potts *v.* Bell, 8 T. R. 548; which, together with the great case of The Hoop (Cornelis), 1 Rob. Rep. Adm. 196, before Lord Stowell, then Sir William Scott, upon the authority of which Potts *v.* Bell was decided, has restored and finally established the rule already mentioned, that one of the consequences of war is the absolute interdiction of all commercial intercourse or correspondence between the subjects of the hostile countries except by the permission of their respective sovereigns. The cases of The Hoop (Cornelis) and Potts *v.* Bell further established that it is illegal for a subject in time of war, without license, to bring from an enemy's port, even in a neutral ship, goods purchased in the enemy's country after the commencement of hostilities, although not appearing to have been purchased from an enemy; in effect, that trading with the inhabitants of an enemy's country is trading with the enemy. . . .

"The law as to trading with the enemy was considered and acted upon by the Court of the Queen's Bench in Reid *v.* Hoskins, 4 Ellis & B. 979, a case identical in its facts with the present, except that the shipowners in that case were British subjects. It was there decided that the contract was dissolved, and the parties absolved from its performance, among other reasons stated, because, without any previous default on the charterer's part, performance had become illegal by the declaration of war and its consequences. But it was also in that case stated, in the judgment of the court, to be material that the owners of the ship were British subjects, because it was, by reason of the circumstances, the duty of the captain, 'as soon as he heard of the declaration of war, to make his escape, and to seek a place of safety, instead of lingering at Odessa in the hope of obtaining a cargo, although he might safely have done so if he had not been a British subject, and the ship had been neutral property.' See the result of that case in the Queen's Bench (Reid *v.* Hoskins, 5 Ellis & B. 729) and the Exchequer Chamber (Reid *v.* Hoskins, 6 Ellis & B. 953); also Avery *v.* Bowden (in Q. B., 5 Ellis & B. 714, and in Exch. Ch., 6 Ellis & B. 953). We entirely concur in the decision in Reid *v.* Hoskins, 4 Ellis & B. 979, and in the reasons advanced in the judgment, either of which, however, would in our opinion have been sufficient. The fact that it was the duty of the master in that case to leave Odessa, and that he could not have received a cargo without dealing and trading with the enemy, was a sufficient ground for the decision that his owners could not recover against the charterer for not loading a cargo which he could not lawfully have received. But that was not the only reason, stated in the judgment, by which it could have been supported. The argument which was again urged in this case, that, apart from any considerations affecting the shipowner only, the defense was valid by reason of the law also forbidding the charterer to load a cargo, and, as a consequence of that prohibition, dissolving the charter party and absolving both parties from further performance, remains to be considered. In order to escape the application of this latter argument, founded upon the principles above stated, it is necessary for the shipowner to establish that the plea of the charterer cannot be true in alleging an impossibility of performance without dealing and trading with the enemy, or, in other words, that the charterer could, but for some default of his own, and notwithstanding the war, have fulfilled his contract in a lawful manner."

In Brown *v.* Delano (1815), 12 Mass. 370, a ship had been chartered to go from New Bedford to Savannah, and there to take on a cargo of timber for England. After the cargo was laden an embargo was declared and it was agreed that the vessel should return to New Bedford until the embargo was raised. The vessel returned to New Bedford and shortly thereafter war was declared against England. It was held that no freight was payable, as the contract of carriage had been terminated by the war.

Agency.

Prior to the present war, there appears to be no English decision as to the effect of war on the relation of principal and agent. In Maxwell *v.* Grunhut (1914), 31 T. L. R. 79, it was held by the Court of Appeal that an agent in England of a principal who is an alien enemy, is not entitled to bring an action against his principal for a declaration that the agent is entitled to collect debts due to the principal and to pay debts due from the principal, or for the appointment of a receiver of the assets of the principal's business. Accord: In re Gaudig and Blum (1914), 31 T. L. R. 153.

The question, however, was fully dealt with by the Court of Appeal in Tingley *v.* Müller [1917] 2 Ch. 144. In this case the defendant, a German by birth, but for many years resident in England although never naturalized, being about to proceed to Germany executed a power of attorney on May 20, 1915, by which he appointed his solicitor, his attorney to sell his leasehold house and to execute such transfers and deeds as were necessary. The power of attorney was made irrevocable for one year. On May 26, 1915, in accordance with a government proclamation, the defendant left England for the purpose of returning to Germany by way of Holland. On June 2, 1915, the leasehold premises were sold to the plaintiff at auction and a deposit was paid and an agreement signed by him. It appears that the defendant reached Germany some time between May 26, and June 11, 1915. In an action brought by the plaintiff for a declaration that the agreement had been dissolved by the act of the defendant in becoming an alien enemy, it was held by the Court of Appeal (reversing on this point the decision of the Judge below) that under the circumstances it must be assumed that the defendant had arrived and was resident in Germany and was an alien enemy. It was further held (Scrutton, L. J., dissenting) that the power of attorney having been given by the defendant at a time when he was not an alien enemy, and being irrevocable for a year, was not avoided by his subsequently becoming an alien enemy, and that the agreement entered into by the attorney in the execution of the power, does not involve any intercourse with the enemy and was not in violation of the laws and proclamations relating hereto nor prohibited at common law, and was therefore valid.

Lord Cozens-Hardy, M. R., says: "I attach great weight to the power of attorney of May 20. At that date it is beyond dispute that Müller was not an alien enemy. The authority conferred upon White was complete and irrevocable. No further 'intercourse' with Müller was needed. White could not be interfered with in reference to the sale. White's position was, having regard to the provisions of the Conveyancing Acts, practically the same as if Müller had conveyed the property to White upon trust for sale. . . . But can it be said that the power of attorney was necessarily revoked when Müller became an alien enemy? I think not. It is true that most agencies, involving as they do continuous intercourse with an alien enemy, are revoked, or at least suspended. But such considerations have no bearing upon a special agency of this nature."

Swinfen Eady, L. J., says: "Nor is the contract in question one entered into 'with an enemy' within the meaning of par. 5 (9). It does not involve any communication or intercourse with the enemy. It is not the case of a person who, being an enemy and while he is such, purports to confer an authority on some one here. Such an authority could not lawfully be given, except under license from the Crown. That a contract entered into in England with a person here who simply holds or manages property belonging to an enemy is not unlawful is apparent from the provisions of the Trading with the Enemy Amendment Act, 1914. Thus section 2, sub-section 1, of that Act provides that any 'share of profits' payable to an enemy shall be paid to the Custodian of Enemy Property, and section 2, sub-section 5, provides that 'where a person is carrying on any business on behalf of an enemy, any sum which, had a state of war not existed, would have been transmissible by a person to the enemy by way of profits from that business shall be deemed to be a sum which would have been payable and paid to that enemy.' This section thus contemplates that a person may lawfully be carrying on business here on behalf of an enemy."

Bray, J., says: "The result of the cases that I have referred to seems to be that in order to determine whether a contract such as this with an alien enemy is illegal and void it is necessary to answer the following questions: (a) Does the contract involve intercourse with an alien enemy? (b) Would it tend if valid to the detriment of this country or to the advantage of the enemy? (c) Is it against public policy? For the reasons I have already mentioned, having regard to the facts of this case, my answer to each of these questions is No. Therefore, so far as the common law is concerned, this contract of June 2 was, in my opinion, neither illegal nor void. The remaining question is whether it was prohibited by any Proclamation. The Proclamation of September 9, 1914, par. 5, provides as follows: 'From and after the date of this Proclamation the following prohibitions shall have effect . . . and We do hereby accordingly warn all persons resident, carrying on business or being in Our Dominions; . . .' and by sub-par. 9: 'Not to enter into any commercial, financial or other contract or obligation with or for the benefit of an enemy'; and then at the end of par. 5: 'We do hereby further warn all persons that whoever in contravention of the law shall commit, aid, or abet any of the aforesaid acts, is guilty of a crime and will be liable to punishment and penalties accordingly.' Is this contract a contract with the enemy within the meaning of sub-par. 9? I think not. I do not think, having regard to the recitals in the preamble, that it applies to a contract like this, made not directly with an alien enemy, but through an agent in this country who had received his authority before the vendor became an alien enemy and who could carry through the transaction without any intercourse with the alien enemy. I think if it had been intended to prohibit a transaction of this kind much clearer language would have been used. I think we ought not to read the sub-section as going beyond the common law or as creating a new crime, which it would do if it went beyond the common law, unless the words used show a clear intention that it should do so. Section 4 of the Trading with the Enemy Amendment Act, 1916, seems to contemplate that an agent may lawfully manage an alien enemy's real property, and if he may manage it I do not see why he should not sell it, provided that he can do so without intercourse and without benefiting the enemy." For a comment on this case, see 143 Law Times, 290.

Regarding the continuance of an agency created before the war, and with special reference to the powers of a secretary of a company appointed by directors who became alien enemies, Lord Atkinson in Daimler Company, Ltd. *v.* Continental Tyre & Rubber Company (Great Britain) Ltd. (H. L.) [1916] 2 A. C. 307, said: "If while the directors could act they delegated to the secretary power to institute what actions he pleases, then, I think, he would continue, despite the suspension of their powers, to be the agent of the company."

In Hugh Stevenson & Sons, Limited, *v.* Aktiengesellschaft für Cartonnagen-Industrie [1916] 1 K. B. 763, a selling agency was declared to be terminated by the war, on the twofold ground that such agency was one requiring commercial intercourse with the enemy, and that the partnership acting as agent was itself dissolved by war.

The question as to the effect of war on powers of attorney arose in In re White (1915), 15 State Reports (New South Wales), 216, where Harvey, J., says: "As a matter of general law it is very arguable that the effect of war must be, so far as a power of attorney is concerned, to put an end to the relationship of principal and agent, except possibly so far as merely ministerial acts are concerned; that in matters where the agent is to exercise a judgment or discretion on behalf of his principal the impossibility of communication between agent and principal must put an end to the relationship otherwise the agency would in effect become irrevocable if the agent chose to act on it during the whole course of the war. I think it might also be considered as contrary to general policy that an agent should be considered as authority to make contracts on behalf of enemies with British subjects as tending to assist and enrich the King's enemies."

In Donohoe *v.* Schroeder & Kubatz (High Court, 1916), 22 Com. L. R. 362, it was assumed that a power of attorney was not revoked.

Whether the relation of principal and agent is terminated or merely suspended by the outbreak of war depends upon the circumstances of the case. Williams *v.* Paine (1898), 169 U. S. 55, 42 L. ed. 658. There are dicta to the effect that war *ipso facto* terminates every agency. Thus, in Howell *v.* Gordon (1869), 40 Ga. 302, Brown, C. J., says: "If the power of attorney was given prior to the war, it was revoked by the war, as the principal was a citizen of Massachusetts, and the agent a resident or citizen of Georgia, and no act of revocation or renunciation by the parties was necessary. Whenever the parties became enemies, by the laws of war, the agency was at an end. It ceased by operation of law." And in Conley *v.* Burson (1870), 1 Heisk. (Tenn.) 145, Furney, J., says: "We hold the deed void, for the reason that war existed at the time of the making of the deed, in which the two States of which the makers of the power of attorney and the attorney in fact were respectively residents and citizens, were antagonistic. By the general law, a state of war puts an end to all executory contracts between the citizens of the different countries. Whatever contract remains then *in fieri*, is either suspended or dissolved, *flagrante bello*. 19 John. 138. The war between the States revoked the power of attorney from John B. and Rachael Duncan to Conley; therefore, the deed was without authority." See also Tait *v.* New York Life Insurance Co. (1873), 1 Flipp. 288, F. C. No. 13,726.

So it has been held that the relation of attorney and client is terminated. Blackwell *v.* Willard (1871), 65 N. C. 555, where Dick, J., says: "The relations between the plaintiffs and their counsel, in said suit in equity, were terminated by the war; and the steps afterwards taken in the cause did not affect them. They had a good claim against the defendants before the war began; their remedy was only suspended, and was revived upon the return of peace." In McCormick *v.* Arnspiger (1873), 38 Tex. 569, while it was said that "if the sale was made after the Non-Intercourse Act of Congress, they certainly could not have made it, being in the State of Illinois; and as they could have no agent in Texas after that Act, they are not chargeable with an illegal sale," yet the Court (per Ogden, P. J.) said that the sale might be regarded as a sale by a trustee, and enforced as such after the war.

But the decided weight of authority is against this view, and the generally accepted view is that where the agency is of a nature not requiring continued intercommunication between the principal and agent, and where the continuance is not inequitable to either party thereto, the agent may perform all of the duties devolving upon him, except in so far as they are forbidden (e. g., acts within the country prohibited by law), and at the end of the war the agency revives. The rule is thus stated in Cocks *v.* Izard (1871), F. C. No. 2934, where Woods, Circ. J., says: "When before the declaration of war, or commencement of hostilities, a principal in one country creates an agency in another, the agency continues notwithstanding the subsequent outbreak of war between the two countries, for all lawful purposes not forbidden by the laws of war. . . . He may receive money due his principal and give acquittances therefor, and he may carry out and fulfill any lawful contract of his principal."

In New York Life Insurance Co. *v.* Davis (1877), 95 U. S. 425, 24 L. ed. 453, after stating that agencies for the collection of moneys are not terminated, Bradley, J., says: "But this indulgence is subject to restrictions. In the first place, it must not be done with the view of transmitting the funds to the principal during the continuance of the war; though, if so transmitted without the debtor's connivance, he will not be responsible for it. Washington, J., in Conn *v.* Penn (1818), Pet. C. C. 496; Buchanan *v.* Curry (1821), 19 John. (N. Y.) 141, 10 Am. Dec. 200. In the next place, in order to the subsistence of the agency during the war, it must have the assent of the parties thereto—the principal and the agent. As war suspends all intercourse between them, preventing any instructions, supervision, or knowledge of what takes place, on the one part, and any report or application for advice, on the other, this relation necessarily ceases on the breaking out of hostilities, even for the limited purpose before mentioned, unless continued by the mutual assent of the parties. It is not compulsory, nor can it be made so, on either side, to subserve the ends of third parties. If the agent continues to act as such, and his so acting is subsequently ratified by the principal, or if the principal's assent is evinced by any other circumstances, then third parties may safely pay money, for the use of the principal, into the agent's hands; but not otherwise. It is not enough that there was an agency prior to the war. It would be contrary to reason that a man, without his consent, should continue to be bound by the acts of one whose relations to him have undergone such a fundamental alteration as that produced by a war between the two countries to which they respectively belong; with whom he can have no correspondence; to whom he can communicate no instructions; and over whom he can exercise no control. It would be equally unreasonable that the agent should be compelled to continue in the service of one whom the law of nations declares to be his public enemy. If the agent has property of the principal in his possession or control, good faith and fidelity to his trust will require him to keep it safely during the war, and to restore it faithfully at the close. . . . What particular circumstances will be sufficient to show the consent of one person that another shall act as his agent to receive payment of debts in an enemy's country during war may sometimes be difficult to determine. Emerigon says, that if a foreigner is forced to depart from one country in consequence of a declaration of war with his own, he may leave a power of attorney to a friend to collect his debts, and even to sue for them. Traité des Assurances, I, 567. But though a power of attorney to collect debts, given under such circumstances, might be valid, it is generally conceded that a power of attorney cannot be given, during the existence of war, by a citizen of one of the belligerent countries resident therein, to a citizen or resident of the other; for that would be holding intercourse with the enemy, which is forbidden. Perhaps it may be assumed that an agent *ante bellum*, who continues to act as such during the war, in receipt of money or property on behalf of his principal, where it is the manifest interest of the latter that he should do so, as in the collection of rents and other debts, the assent of the principal will be presumed, unless the contrary be shown; but that, where it is against his interest, or would impose upon him some new obligation or burden, his assent will not be presumed, but must be proved, either by his subsequent ratification, or in some other manner."

In United States *v.* Grossmayer (1869), 9 Wall. 72, 19 L. ed. 627, Davis, J., says: "We are not disposed to deny the doctrine that a resident in the territory of one of the belligerents may have, in time of war, an agent residing in the territory of the other, to whom his debtor could pay his debt in money, or deliver to him property in discharge of it."

The leading American case is Williams *v.* Paine (1898), 169 U. S. 55, 42 L. ed. 658, affirming s. c. (1895), 7 App. Cas. (D. C.) 116. In 1859, Lieutenant Ransom of the United States Army, then stationed in Pennsylvania, and his wife executed a power of attorney to the latter's brother to convey their interest in certain lands in the District of Columbia. After the Civil War broke out, Ransom, who was a native of North Carolina, resigned his commission and entered the Confederate service. His wife accompanied him to the south. Her brother remained with the United States Army in which he was an officer. During the war, the lands were sold and a deed for them was given by the attorney in fact under the power of attorney. The purchase money was duly paid and the share of Mrs. Ransom was paid over to her while she was within the lines of the Southern army with her husband. Some years afterwards, a bill was filed to have the deed executed by Mrs. Ransom's brother under the power of attorney, declared void. In support of this petition, it was argued among other things that the power of attorney was revoked by the war. The court, per Peckham, J., said: "We are of opinion that the war did not revoke the power of attorney executed by Mrs. Ransom and her husband. It is not every agency that is necessarily revoked by the breaking out of a war between two countries, in which the principal and agent respectively live. Certain kinds of agencies are undoubtedly revoked by the breaking out of hostilities. Agents of an insurance company, it is said, would come within that rule. (Insurance Company *v.* Davis, 95 U. S. 425, 429.) Under the circumstances of this case, we think the attorney in fact had the right to make the conveyance he did: It was not an agency of the class such as is mentioned in Insurance Company *v.* Davis, *supra*, and was not necessarily revoked and avoided by the war. Where it is obviously and plainly against the interest of the principal that the agency should continue, or where its continuance would impose some new obligation or burden, the assent of the principal to the continuance of the agency after the war broke out will not be presumed, but must be proved either by his subsequent ratification or in some other manner. And, on the other hand, where it is the manifest interest of the principal that the agency constituted before the war should continue, the assent of the principal will be presumed. Or, if the agent continues to act as such, and his so acting is subsequently ratified by the principal, then those acts are just as valid and binding upon the principal as if no war had intervened. (Insurance Company *v.* Davis, *supra.*) It is entirely plain, as we think, that the mere fact of the breaking out of a war does not necessarily and as a matter of law revoke every agency. Whether it is revoked or not depends upon the circumstances surrounding the case and the nature and character of the agency. . . . Here we have a power of attorney properly executed for the purpose of selling, among other lots, this real estate in question, and a state of circumstances which fairly shows that it was for the benefit and interest of the principal that such real estate should be sold at the time the sale in fact occurred; we have also the principal's receipt of her share of the purchase-money in 1865, with full knowledge of all the facts, and her acquiescence in and approval of the action of her attorney up to the time of her death in February, 1881. Upon these facts, we think it clear that the instrument executed by the attorney in fact was as valid and effectual as if no war had intervened. The ratification of the act of the attorney was full and complete. It recognized and assented to the continued existence of the agency. The purchase-money for the land was received by the principal, and to permit her heirs after her death to repudiate the transaction on the ground that the power of attorney had been revoked would be at war with every principle of equity and fair dealing."

In Botts *v.* Crenshaw (1868), Chase, 224, F. C. No. 1690, it was held that where an attorney had been entrusted with the collection of a claim, the agency thus created was not revoked by war. See also as to agency generally: Anderson *v.* Bank (1869), Chase, 535, F. C. No. 354; Stoddart *v.* United States (1870), 6 Ct. Cl. 340; Douglas *v.* United States (1878),

14 Ct. Cl. 1; Ward *v.* Smith (1868), 7 Wall. 447, 19 L. ed. 207; New York Life Insurance Co. *v.* Statham (1876), 93 U. S. 24, 23 L. ed. 789; Williams *v.* Paine (1895), 7 App. Cas. (D. C.) 116; Bartow County *v.* Newell (1880), 64 Ga. 699, but see Howell *v.* Gordon (1869), 40 Ga. 302; Stiles *v.* Easley (1869), 51 Ill. 275; Fisher *v.* Krutz (1872), 9 Kan. 501; Buford *v.* Speed (1875), 11 Bush (Ky.) 338; Monsseaux *v.* Urquhart (1867), 19 La. Ann. 482; Kershaw *v.* Kelsey (1868), 100 Mass. 561, 97 Am. Dec. 124; Murrell *v.* Jones (1866), 40 Miss. 565; Statham *v.* New York Life Insurance Co. (1871), 45 Miss. 581, 7 Am. Rep. 737. Cp. New York Life Insurance Co. *v.* Statham (1876), 93 U. S. 24, 23 L. ed. 789; Buchanan *v.* Curry (1821), 19 John. (N. Y.) 137, 10 Am. Dec. 200; Robinson *v.* International Life Insurance Co. (1870), 42 N. Y. 54, 1 Am. Rep. 400; Sands *v.* New York Life Insurance Co. (1872), 50 N. Y. 626, 10 Am. Rep. 535, affirming s. c., 59 Barb. 556; Hubbard *v.* Matthews (1873), 54 N. Y. 43; Pope *v.* Chafee (1868), 14 Rich. Eq. (S. C.) 69; Darling *v.* Lewis (1872), 11 Heisk. (Tenn.) 125; Maloney *v.* Stephens (1872), 11 Heisk. (Tenn.) 738; but see Conley *v.* Burson (1870), 1 Heisk. (Tenn.) 145; Rodgers *v.* Bass (1877), 46 Tex. 505; but see McCormick *v.* Arnspiger (1873), 38 Tex. 569; Manhattan Life Insurance Co. *v.* Warwick (1870), 20 Gratt. (Va.) 614, 3 Am. Rep. 218; Hale *v.* Wall (1872), 22 Gratt. (Va.) 424; New York Life Insurance Co. *v.* Hemdren (1873), 24 Gratt. (Va.) 536; Mutual Benefit Life Insurance Co. *v.* Atwood (1873), 24 Gratt. (Va.) 497; Small *v.* Lumpkin (1877), 28 Gratt. (Va.) 832.

Where the agency is not revoked a payment to the agent binds the principal, and sales made by the agent are valid. So also a notice of dishonor served upon the agent charges his endorser principal.

The agent is bound to take all steps necessary for the protection of the property and other interests of his principal, e. g., keep property insured, prevent waste, employ services of counsel. Buford *v.* Speed (1875), 11 Bush (Ky.) 338. The agent remains accountable for any failure to exercise due care, as in ordinary cases, and is entitled to compensation for his services.

The agent remains accountable to his principal for money or other property administered or received by him. Stiles *v.* Easley (1869), 51 Ill. 275; Shelby *v.* Offutt (1875), 51 Miss. 128; Caldwell *v.* Harding, 1 Lowell, 326, F. C. No. 2302; McVeigh *v.* Bank (1875), 26 Gratt. (Va.) 188. And this duty to account arises even though the agency is terminated by the war; the accounting is postponed until the end of the war. In order to save the moneys collected, the agent may invest it in property in the country where the agency is being carried on, Stoddart *v.* United States (1870), 6 Ct. Cl. 340, which must be accounted for as required by the law of the country in which the agent acts. Thus, payment to the Custodian under the Trading with the Enemy Act and any other acts required by law are valid. The decision in cases like Botts *v.* Crenshaw (1868), Chase, 224, F. C. No. 1690, where investments were made in securities in accordance with the law of the place where the agency was being carried on, and the agent was nevertheless held accountable, are explainable on the ground that the investment authorized was one in securities in aid of the Rebellion, and therefore, the laws and other governmental acts authorizing such investment were unconstitutional.

The powers of alien enemy directors of a corporation are terminated upon the outbreak of war or upon the prohibition of intercourse. The same applies to proxies made by alien enemy shareholders. See *supra*, p. 177.

Partnership.

The doctrine that partnerships of which alien enemies are members, are dissolved by war is usually supported on the twofold ground that further performance of the contract is unlawful, and that a continuance of the partnership, where the members are prohibited from communicating with each other, is inequitable. Under some circumstances, a dissolution might also be supported under the doctrine of the "Coronation Cases."

Where the partnership agreement provides for the continuance of the partnership business, even after the outbreak of a war, separating the partners by belligerent lines, the dissolution can, in the absence of express statutes (such as the California statute presently to be noted), be supported only on the ground of illegality of performance, unless we accept the rather doubtful ground of public policy, suggested in Planters' Bank *v.* St. John (1869), 1 Woods, 585, F. C. No. 11,208, which appears to be contrary to the English doctrine.

The doctrine is limited to partnerships. It does not extend to the relation existing between co-owners or co-tenants. Therefore, the co-owners of a vessel do not cease to be interested in the further profits of the vessel, and may recover their shares of freight earned by the vessel during the war. Caldwell *v.* Harding (1869), 1 Lowell, 326, F. C. No. 2302. The same rule, it seems, should apply to mining partnerships such as exist under the laws of some of the western States, and in which the relation of the partners is substantially a relation of co-tenants. Cp. California Civil Code, section 2516; Skillman *v.* Lachman (1863), 23 Cal. 198, 83 Am. Dec. 96.

The rule must be limited in its application to partnerships operating within the United States or governed by the laws of the United States.

It does not extend to cases where a person resident in the United States is a co-partner with alien enemies for the carrying on of business in a country other than the United States. In this connection it is to be noted that under the laws of certain countries (e. g., Germany, Austria) a partnership is not dissolved by reason of the co-partners becoming separated by the line of war. An American partner of a German firm does not cease to be a member of such firm by reason of the declaration of war. It is to be noted that the English cases have thus far dealt only with the case of partnerships carrying on business in England. The reported American cases arose out of the War of 1812 or the Civil War, and while they have applied the same rule both as to partnerships doing business in the forum and to partnerships doing business in the enemy country, the enemy country in each of the cases was one that had a cognate system of law, and may be assumed to have recognized a similar doctrine.

It is also questionable whether the doctrine of dissolution by war, obtaining in the Anglo-American law, is in force in the parts of the United States where the commercial law is based on the law of Spain (Philippines, Porto Rico) or of Colombia (Canal Zone).

Prior to the present war, there was no English decision regarding the effect of war on a partnership where one or more partners are alien enemies. Evans *v.* Richardson (1817), 3 Mer. 469, only decided that an agreement between an American citizen and a British subject then in America for the exportation of goods from America on joint account in time of war "provided a peace should not be likely to take place at the time of shipping the goods" was illegal. Trotter (Supp.) 53. Lindley, Partnership (8th ed.), 87, 88, 111, 648, states that in his opinion war dissolves a partnership. So also Hall, International Law (6th ed.), 384, is of opinion that a partnership is dissolved "since it is impossible for partners to take up their joint business on the conclusion of war at precisely the point where it was at its commencement."

In Rex *v.* Kupfer [1915] 2 K. B. 321, the Court of Criminal Appeal assumed that a partnership was dissolved. The English Trading with the Enemy Act, 1914, contains no specific provision on this point, and section 2 (2) apparently assumes that war does not dissolve a partnership. On the other hand section 3 provides for the appointment of a receiver on the petition of the Board of Trade. Trotter (Supp.) 54.

In Hugh Stevenson & Sons, Limited *v.* Aktiengesellschaft für Cartonnagen-Industrie [1916] 1 K. B. 763, a partnership existing between a British subject and a German subject residing in Germany, the business being carried on in England, was held to be dissolved by and at the date of the outbreak of the war between the two countries. Under the terms of the partnership, it was provided that the English partners (a British company), should be the sole agents for the sale in Great Britain and the British Colonies of a certain machine made by defendants, and that certain products connected therewith were to be manufactured in England by the partnership. The action was brought by the English partner for a declaration as to the rights of the parties under the agreement. Atkin, J., said: "It appears to me that the agreement was one which it became illegal to perform after the outbreak of war. It necessarily involved commercial intercourse with an enemy, and could not be fulfilled without such intercourse. I am not clear that it is covered by the express words of any of the Trading with the Enemy Acts or the Proclamations made thereunder, but the rules of the common law which are preserved by those Acts are sufficient to avoid the contract upon the outbreak of war. I need only refer to Esposito *v.* Bowden (7 Ellis & B. 763) and the recent decision of the Court of Appeal in Zinc Corporation *v.* Hirsch ([1916] 1 K. B. 541). In respect of the agreement the plaintiffs are, I think, entitled to the first two declarations they claim in the prayer of the statement of claim, which read as follows: '(1.) A declaration that the contract in writing dated November 22, 1906, between plaintiffs and defendants set out in paragraph 2 hereof was dissolved on August 4, 1914. (2.) A declaration that the agency constituted by the said contract was terminated on the said August 4, and that defendants are only entitled to such sum in respect thereof as was due to them by plaintiffs on that date.' In respect of the partnership the plaintiffs ask for further and distinct declarations, namely, that the partnership is dissolved, and as to their rights on that footing. The defendants contend that as far as the partnership is concerned it was only suspended by the declaration of war, and they rely upon certain provisions of the Trading with the Enemy Acts in support of that contention. I think it would probably be sufficient in this case to say that the agency and the partnership constituted in that one agreement form integral parts of one arrangement, and that the decision I have already come to disposes of the partnership as well as the agency. But I do not rest my judgment on this ground, for I think it important to deal with the questions of principle argued before me. It appears to me that the legal effect of an outbreak of war upon a partnership between two persons, each residing in the respective belligerent countries, is to dissolve the partnership. The relationship necessarily involves commercial intercourse in the closest degree, and such intercourse on the outbreak of war becomes illegal. Once such illegality has supervened, it seems impossible for the relationship to continue to exist so as to be capable of being revived after the war. I think that reasoning of Chancellor Kent in Griswold *v.*

Waddington (16 Johnson, Sup. Ct. New York, 438; Scott's Cases on International Law, 504), is convincing on this point. The decision is approved in Esposito *v.* Bowden (7 Ellis & B. 785) and in Zinc Corporation *v.* Hirsch ([1916] 1 K. B. 559). Indeed the question seems to be concluded by section 34 of the Partnership Act, 1890, which provides that 'a partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.'"

On appeal, the Court of Appeal [1917] 1 K. B. 842, unanimously held that the partnership was dissolved by and at the date of the outbreak of the war between Great Britain and the German Empire, on the ground that the continuance of a business such as here in question involved commercial intercourse with the enemy.

In Kupfer *v.* Kupfer (1916), 60 Sol. Jour. 221, an action was brought by the resident London partner for a declaration that the partnership doing business in London and existing between him and certain other partners in Germany was dissolved. Neville, J., declared the partnership to be dissolved and directed the usual partnership accounts with the proviso that these accounts were not to be proceeded with until three months after the declaration of peace. He also gave liberty to apply as to the date from which the accounts ought to be taken. See also Rombach *v.* Rombach (1914), W. N. (Eng.) 423; In re Kopper's Coke Oven and Bye-Products Co. (1914), W. N. (Eng.) 450. The South African Courts have also held that a partnership is dissolved by war. Stern & Co. *v.* De Waal, South African Law Reports [1915] Transvaal, 60. See also Stoll *v.* Paterson & Co., Ltd. (1915), 18 West. Australia, 42.

The doctrine was, however, criticised in a case before the High Court of Australia, In re Alexander & Co. (High Court, 1915), 19 Com. L. R. 533, in which Barton, J., says: "I am not sure that what has been called 'the old firm' was dissolved by operation of the outbreak of war. There seems to be much reason in the view of Dr. Schuster, who, in his book on The Effect of War and Moratorium on Commercial Transactions, 2d ed. (1914), p. 22, thinks it 'natural to say that a partnership agreement with an alien enemy is like other agreements, suspended during the war in so far as it involves intercourse with such alien enemy, but that it becomes fully operative after the termination of the war unless it has in the meantime expired by lapse of time;' and at p. 23, he says: 'There is no reason why the partnership between the partners other than the enemy partner should be terminated or suspended by the outbreak of war.'"

In Armitage *v.* Borgmann (1915), 59 Sol. Jour. 219, there was a clause in the partnership deed making provision for what was to be done in the event of the two German partners in the business being called out to serve in the German army. On July 31, 1914, a deed of accession was entered into purporting to carry out the terms of the special clause in the partnership deed. This deed of accession recited the outbreak of war in Germany and that two of the partners (the defendants) had been called out for active service in the German army, and were therefore unable to reside in England. It was agreed that the defendants should be entitled to serve in the army and that the partnership should be continued. On October 8, 1914, the Home Secretary granted a license to the resident English partner to carry on the partnership business on condition that no payments should be made to or for alien enemies. The plaintiff afterwards contended that the partnership was dissolved *ipso facto* by the declaration of war and that the provisions in the partnership deed and subsequent agreement were void. Sargant, J., held that a receiver should not be appointed for the purpose of winding-up, but that such receiver should be appointed for the purpose of continuing the business for a limited time. Leave to serve defendants with notice of suit was given.

Story, on Partnership, section 316, quoted with approval in The William Bagaley (1866), 5 Wall. 377, 18 L. ed. 583, says that by reason of the outbreak of the war, there is such "an utter incompatability created by operation of law between the partners as to their respective rights, duties and obligations, both public and private, and therefore a dissolution must necessarily result therefrom, independent of the will or acts of the parties."

The leading American case is that of Griswold *v.* Waddington (1819), 16 John. (N. Y.) 438. The opinion of Chancellor Kent in this case has been quoted or cited with approval in all subsequent cases. It is to be noted, however, that Chancellor Kent based his decision in the case on the ground that the plaintiff was unable to recover because his claims were based on transactions entered into during war, and, therefore, prohibited by law. The views, therefore, constitute merely a dictum. Chancellor Kent says: "It appears to me, that the declaration of war did of itself work a dissolution of all commercial partnerships, existing at the time, between British subjects and American citizens. By dealing with either party, no third person could acquire a legal right against the other, because one alien enemy cannot, in that capacity, make a private contract binding upon the other. This conclusion would seem to be an inevitable result from the new relations created by the war. It is a necessary consequence of the other proposition, that it is unlawful to have communication or trade with an enemy. To suppose a commercial partnership (such as this was) to be continued, and recognized by law as subsisting, when the same law had severed the subjects of the two countries, and declared them enemies to each other, is to suppose the law chargeable with inconsistency and absurdity. For what use or purpose could the law uphold such a connection, when all further intercourse, communication, negotiation, or dealing between the partners, was prohibited, as unlawful? Why preserve the skeleton of the firm, when the sense and spirit of it has fled, and when the execution of any one article of it by either, would be a breach of his allegiance to his country? In short, it must be obvious to every one, that a state of war creates disabilities, imposes restraints, and exacts duties altogether inconsistent with the continuance of that relation. Why does war dissolve a charter-party, or a commercial contract for a particular voyage? Because, says Valin (tom. 1, p. 626.), the war interposes an insurmountable obstacle to the accomplishment of the contract; and this obstacle arising from a cause beyond the control of the party, it is very natural, he observes, that the charter-party should be dissolved, as of course. Why should the contract of partnership continue by law, when equally invincible obstacles are created by law to defeat it? If one alien enemy can go on and bind his hostile partner, by contracts in time of war, when the other can have no agency, consultation, or control concerning them, the law would be as unjust as it would be extravagant. . . .

"If we examine, more particularly, the nature and objects of commercial partnerships, it would seem to be contrary to all the rules by which they are to be construed and governed, that they should continue to exist, after the parties are interdicted, by the government, from any communication with each other, and are placed in a state of absolute hostility. It is of the essence of the contract that each party should contribute something valuable, as money, or goods, or skill and labor, on joint account, and for the common benefit; and that the object of the partnership should be lawful and honest business. (Watson on Partnership, pp. 5–7. Code Civil, No. 1833. Pothier, Traité du Contrat de Société, No. 1, 8, 10, 11, 14. Ferriere sur Inst. 3, 26.) But how can the partners have any unity of interest, or any joint object that is lawful, when their pursuits, in consequence of the war, and in consequence of the separate allegiance which each owes to his own government, must be mutually hostile? The commercial business of each country, and of all its people, is an object of attack, and of destruction to the other. One party may be engaged in privateering, or in supplying the fleets and armies of his country with provisions, or with munitions of war; and can the law recognize the other partner as having a joint interest in the profits of such business? It would be impossible for the one partner to be concerned in any commercial business, which was not auxiliary to the resources and efforts of his country in a maritime war. And shall the other partner be lawfully drawing a revenue from such employment of capital, and such personal services directed against his own country? We cannot contemplate such a confusion of obligation between the law of partnership and the law of war, or such a conflict between his interest as a partner, and his duty as a patriot, without a mixture of astonishment and dread. Shall it be said that the partnership must be deemed to be abridged during war, to business that is altogether innoxious and harmless? But I would ask, How can we cut down a partnership in that manner without destroying it? The very object of the partnership, in this case, was, no doubt, commercial business between England and the United States, and which the hostile state of the two countries interdicted; or it may have been business in which the personal communication and advice of each partner was deemed essential, and without which the partnership would not have been formed. It is one of the principles of the law of partnership, that it is dissolved by the death of any one of its members, however numerous the association may be; and the reason is this: the personal qualities of each partner enter into the consideration of the contract, and the survivors ought not to be held bound without a new assent, when, perhaps, the character of the deceased partner was the inducement to the connection. (Pothier, Traité du Contrat de Société, No. 14 Inst. 3, 26, 5. Vinnius, h. t.) Shall we say that the partnership continues, during war, in a quiescent state, and that the hostile partners do not share in each other's profits, made in carrying on the hostile commerce of each country? . . . It is one of the fundamental principles of every commercial partnership, that each partner has the power to buy and sell, and pay and receive, and to contract and bind the firm. But then, again, as a necessary check to this power, each partner can interfere and stop any contract about to be made by any one of the rest. This is an elementary rule, derived from the civil law. *In re pari potiorem causam esse prohibentis constat.* (Pothier, Trait. du Cont. Soc. n. 90.) But if the partnership continues in war between hostile associates, this salutary power is withdrawn, and each partner is left defenceless. If the law continues the connection, after it has destroyed the check, the law is then cruel and unjust. . . . We can easily perceive with what force their doctrines apply to this case, for a partnership, formed between alien friends, must at once be defeated, when they become alien enemies. They can no more assist each other than if they were palsied in their limbs, or bereft of their understandings, by the visitation of Providence."

Commenting on Griswold *v.* Waddington, Schuster, Effect of War on Commercial Transactions, 21–23, says: "The assumption that the outbreak of war dissolved the partnership is therefore not in any way necessary to support the decision in this case, and it is important to note that the absence of any reported case as to the effect of the outbreak of war on a partnership between the subjects of belligerent powers was specially pointed out by counsel for the plaintiff, and was not disputed by the other side. It should further be observed that Griswold *v.* Waddington only deals with a claim between a creditor of the alleged partnership and an alleged partner. . . . The text-books do not go into this point at all. In fact the only passage in all the literature on the subject which refers to it, is a statement in the last edition of Hall (p. 384), where it is contended that the outbreak of war must result in the dissolution of partnership, 'since it is impossible for partners to take up their joint business on the conclusion of war at precisely the point where it was abandoned at its commencement.' I fail to understand why this should be a reason for a final dissolution of the partnership, and why it should not be sufficient to adjust matters in the best possible way after the end of the war. The winding up of the partnership affairs and the distribution of the partnership property remaining after such winding-up could not in any case take place before that period, and on its arrival the reason for the dissolution would have disappeared. If this circumstance is taken into account it seems far more natural to say that a partnership agreement with an alien enemy is, like other agreements, suspended during the war in so far as it involves intercourse with such alien enemy, but that it becomes fully operative after the termination of the war unless it has in the meantime expired by lapse of time."

In Leftwich *v.* Clinton (1870), 4 Lans. (N. Y.) 176, an action was brought to recover under an agreement made between John W. Leftwich on behalf of himself and of F. T. Leftwich, and the defendant. John W. Leftwich and F. T. Leftwich were residing in the Confederate States, but the former left soon after the outbreak of the Civil War. The contract was entered into after the Proclamation of the President of August 16th, 1861, prohibiting all commercial intercourse between the United States and the Confederate States. It was urged by defendant that the contract was void as between citizens of belligerent states and in violation of the Proclamation of the President. When the contract was made, John W. Leftwich was still a resident within the Confederate States. Upon the point of the effect of the war on the existing partnership after John W. Leftwich left the South, Miller, P. J., says: "So far then as he (F. T. Leftwich) is concerned it may be assumed that he was a public enemy of the United States and his contract was void and cannot be enforced. He could not therefore be a partner of John W. Leftwich if the latter was a loyal citizen of the United States. The war terminated the co-partnership and it thereby became dissolved if any had existed prior to the war. If this position is correct, then John W. Leftwich would remain as the sole plaintiff in the case."

Similar views upholding the doctrine that the outbreak of war dissolves a partnership are set forth in Leathers *v.* Commercial Insurance Co. (1867), 2 Bush (Ky.) 296, 92 Am. Dec. 483; New York Life Insurance Co. *v.* Clopton (1870), 7 Bush (Ky.) 179, 3 Am. Rep. 290; McAdams *v.* Hawes (1872), 9 Bush (Ky.) 15; Durden *v.* Smith (1870), 44 Miss. 548; Mutual Benefit Life Insurance Co. *v.* Hillyard (1874), 37 N. J. L. 444, 18 Am. Rep. 741; Seaman *v.* Waddington (1819), 16 John. (N. Y.) 510; Woods *v.* Wilder (1870), 43 N. Y. 164, 3 Am. Rep. 684; Sands *v.* New York Life Insurance Co. (1872), 50 N. Y. 626; McStea *v.* Matthews (1872), 50 N. Y. 166; Hubbard *v.* Matthews (1873), 54 N. Y. 43, 13 Am. Rep. 562; Rodgers *v.* Bass (1877), 46 Tex. 505; Booker *v.* Kirkpatrick (1875), 25 Gratt. (Va.) 145; Taylor *v.* Hutchinson (1894), 25 Gratt. (Va.) 536, 18 Am. Rep. 699; Small *v.* Lumpkin (1877), 28 Gratt. (Va.) 832; Hanger *v.* Abbott (1867), 6 Wall. 532, 18 L. ed. 939; Matthews *v.* McStea (1875), 91 U. S. 7, 23 L. ed. 188.

There is no statutory provision regarding the matter in the Partnership Act of England or in the Partnership Acts of British Overseas Dominions based on the English Act.

The question is not expressly covered in the American Uniform Partnership Act. Under section 31 (3) such a partnership would be dissolved on the ground that it has become unlawful to continue the same. In California, Montana, North Dakota and South Dakota, the effect of war on existing partnerships is regulated by statutes. The California Civil Code, section 2450, provides: "A general partnership is dissolved as to all the partners: . . . 5. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides." The laws of Montana [Revised Codes (1907), section 5494], North Dakota [Compiled Laws (1913), section 6415], and South Dakota [Compiled Laws (1913), section 1752] are identical with the California law. Special partnerships are dissolved on the same ground. California Civil Code, section 2509, Montana, Revised Codes (1907), section 5533, North Dakota, Compiled Laws (1913), section 6455 and South Dakota, Compiled Laws (1913), section 1792. Under these laws, a general or special partnership is dissolved as of April 6, 1917, if one of the partners was resident in the German Empire. Such partnerships are dissolved as of October 6, 1917, where one of the partners is a resident in Austria-Hungary, Bulgaria, or Turkey, by reason of the general prohibition of commercial intercourse between this country and the countries named. The statutes do not cover the case of a partnership existing between a person resident in the United States and individuals other than persons within the territory, (including that occupied by the military and naval forces) of a nation with which the United States is at war or the ally of such nation as defined in section 2 of the Act; nor persons who by future proclamations of the President may be included under the term "enemy" or "ally of enemy." But a continuance of a partnership with such persons would be a "trading with them" within the meaning of section 3 of the act, and the contract would be dissolved by reason of the illegality of its continued performance.

As the dissolution takes place by operation of law, no notice of dissolution need be given. Kent, C., in Griswold *v.* Waddington (1819), 16 John. (N. Y.) 438, says: "Another objection was raised, from the want of notice of the dissolution of the partnership. The answer to this is extremely easy, and perfectly conclusive. Notice is requisite when a partnership is dissolved by the act of the parties, but it is not necessary when the dissolution takes place by the act of the law. The declaration of war, from the time it was duly made known to the nations, put an end to all future dealings between the subjects and citizens of the two countries, and, consequently, to the future operations of the copartnership in question. The declaration of war was, of itself, the most authentic and monitory notice. Any other notice, in a case like this, between two public enemies, who had each his domicil in his own country, would have been useless. All mankind were bound to take notice of the war, and of its consequence. The notice, if given, could only be given by each partner in his own country; and there it would be useless, as his countrymen could not hold any lawful intercourse with the enemy. It could not be given as a joint act, for the partners cannot lawfully commune together."

A similar view is announced by Woods, J., in Planters' Bank *v.* St. John (1869), 1 Woods, 585, F. C. No. 11,208: "The public law and public policy forbidding the partnership relation between citizens of hostile states, it is not in the power of the partners to continue a partnership during war by failing to give notice of its dissolution. A dissolution of partnership by the fact of war demands no notice to any person whatever to make it effectual as to all persons whomsoever."

All parties remain bound on antecedent partnership obligations. Douglas *v.* United States (1878), 14 Ct. Cl. 1; Griswold *v.* Waddington (1819), 16 John. (N. Y.) 438; Sands *v.* New York Life Insurance Co. (1872), 50 N. Y. 626, 10 Am. Rep. 535; Booker *v.* Kirkpatrick (1875), 26 Gratt. (Va.) 145; Cramer *v.* United States (1871), 7 Ct. Cl. 302; Hubbard *v.* Matthews (1873), 54 N. Y. 43, 13 Am. Rep. 562.

The resident partner exercises all the rights of the firm and represents his copartner for the purpose of winding-up. Notice of dishonor given to such representative binds the absent partners. Hubbard *v.* Matthews (1873), 54 N. Y. 43, 13 Am. Rep. 562.

In Hugh Stevenson & Sons, Ltd. *v.* Aktiengesellschaft für Cartonnagen-Industrie [1916] 1 K. B. 763, Atkin, J., said regarding the effects of a dissolution: "If, then, a partnership with an enemy is dissolved upon the outbreak of war, what in such a dissolution are the rights of the former partners? The defendants contended that the rights on dissolution are determined by the provisions of the Partnership Act, 1890." After stating that the provisions of the English Partnership Act, 1890, sections 37 to 42, were not applicable, he continues: "The difficulties created by these sections, both as to their effect on commerce generally and as to the machinery for carrying them out, satisfy me that they and the common law and equitable rules to which they gave statutory effect have no application to a dissolution effected by the outbreak of war, the effects of which must be governed by the special principles affecting commercial intercourse in that event. Enemy property in this country is not to be confiscated, but on the other hand the enemy is not to be given rights which after the outbreak of hostilities would tend to defeat one of the necessary objects of such hostilities, namely, to confound the enemy's commerce and to conserve our own. The enemy's interest in the partnership at the date of dissolution is that to which he is entitled. Such right is in normal times to have the debts of the partnership paid out of partnership assets, and the surplus, if any, distributed amongst the partners. For the reasons I have given above it seems to me impossible that he can insist on the business being terminated to secure this result, and I think that full effect can be given to his right of property by holding, as I do, that where his British partner desires to carry on the business, the enemy's right is to have his interest as above defined valued as of the date of the declaration of the war, and to be paid when payment is legally possible, that amount. I think upon the partnership assets for the amount so ascertained, he would, as an existing right of property, have an equitable lien. Subject to these rights it appears to me to follow that upon a declaration of war an enemy partner ceases any longer to be interested in the commercial adventure in this country whether as to assets, profits, or interest."

In the same case on appeal [1917] 1 K. B. 842, it was held by Swinfen Eady, L. J., and Banks, L. J. (Lawrence, L. J., dissenting) that the provisions of the Partnership Act of 1907 as to the winding-up of the partnership were applicable in such a case; that the English partner was not entitled to purchase the enemy partner's share at valuation or to take it himself upon paying its value; and that the enemy partner was entitled to a share of the profits made after the dissolution by the English partner carrying on the business with the aid of the enemy partner's share of the capital. Swinfen Eady, L. J., said: "The plaintiffs in carrying on the business in England after August 4, 1914, were not under the control of the enemy, or communicating or holding any intercourse with him, or receiving anything from him, or sending anything to him, or making any payment to him. They were not trading with him, although some benefit might accrue to the enemy from what they were doing. Every transaction whereby a profit may ultimately enure to an enemy is not necessarily a transaction entered into for the benefit of an enemy. If it were, no English company with a single enemy shareholder could continue to trade. Again, some profits may have arisen from the business after the commencement of the war from contracts entered into or obligations incurred previously. . . . Whatever difficulties there may be in the way of the defendants establishing a right to any sum as profit which has arisen since August 4, 1914, the plaintiffs are not entitled, in my judgment, to a declaration that under no circumstances can the defendants claim any profit which has arisen or been received after August 4, 1914. Again, there is the alternative of interest, from which he is also excluded by the judgment. Under the circumstances before mentioned, probably a claim for interest would be the real and effective claim in the present case, and not profits. Upon what ground can it be maintained that the plaintiffs, having used the defendants' share of the partnership assets since the outbreak of war in carrying on the business, are under no obligation to pay interest in respect thereof? A debt which by law carries interest, and which is owing to an enemy does not cease to carrying interest by reason of the war, although the enemy cannot enforce payment until the return of peace. If the principal of the debt is not confiscated, why would the interest be confiscated? The learned judge below said 'Enemy property in this country is not to be confiscated;' yet the effect of the judgment is to confiscate the interest, as if the defendant had not been an enemy he could certainly have claimed interest."

In Kupfer *v.* Kupfer (1916), 60 Sol. Jour. 221, the partnership was declared dissolved and an accounting directed but not to be proceeded with until three months after the conclusion of the war.

In 1857 certain minors inherited slaves. The guardian of the minors entered into a partnership with one McHatton to grow cotton in Mississippi under the terms of which McHatton was to furnish the land and the guardian was to furnish slaves. One Dodds was appointed the common agent of both parties and had charge of the plantation. After the outbreak of the Civil War, McHatton and Dodds continued to grow cotton on the plantation. The infants continued to reside in Illinois. In 1862 McHatton removed the slaves to Texas, abandoned the plantation and left the cotton and other effects as the share of the Illinois parties in the hands of Dodds, who continued to hold possession on behalf of the infants until 1863, when the cotton was captured. On the question of the right of the infants to recover the value of the cotton, the United States Court of Claims, Douglas *v.* United States (1878), 14 Ct. Cl. 1, held, that the partnership was dissolved by the outbreak of the war, but that such dissolution did not affect past transactions, and the parties remained bound to account to each other. It was further held that the turning over of the share of the absent partner by a resident partner to a common agent appointed prior to hostilities was not in violation of the rules forbidding intercourse between belligerents. Hunt, J., said: "The effect of this principle was to dissolve the copartnership between the claimants and their partner, McHatton. But this dissolution had no regard to things past, but only to things future. The parties were still partners as to the goods and property actually acquired by them as such before the war, and remained bound to account to each other for the proceeds of such goods and property so acquired. . . . A payment in discharge of an actual indebtedness by one partner to his absent partners, after the dissolution of the concern by war, whether such payment be effected by the delivery of a sum of money or of goods, if made in good faith, and with no purpose to evade the operation of the rights of the Government, during our civil war, is valid if made to an agent on the spot, and if the agency had been created before the war."

After war, neither partner can bind the other by dealing in the firm name. A former partner, therefore, is not liable upon a note endorsed in the firm name after the commencement of war. Bank of New Orleans *v.* Matthews (1872), 41 N. Y. 12. Nor can the resident partner appoint an agent in the firm name to buy property with partnership funds. Cramer *v.* United States (1870), 6 Ct. Cl. 381; (1871), 7 Ct. Cl. 302.

It has been suggested that even under the view that a partnership agreement is merely suspended and not terminated by war, the legal presumption as to the authority of a partner to bind his copartner would be rebutted as to an alien enemy partner. Schuster, Effect of War on Commercial Transactions, 23.

Marine insurance.

In Cohen *v.* N. Y. Mutual Life Insurance Co. (1872), 50 N. Y. 610, 10

Am. Rep. 522, per Allen, J., it is said: "In the case of a marine insurance, or a contract of affreightment, a war might act as a dissolution and put an end to them. The first is upon enemies' property, and an insurance is in support of their commerce and entirely inconsistent with the allegiance due to the government of the underwriter. As to such a contract, the authorities say the insurance terminates absolutely, and at once, by the very act of war, and the parties are in the same condition as if no contract was made; the one loses the premium, and the other his security against loss."

The English law appears to have been in doubt. The cases are reviewed, and the law laid down by Lord Alvanley, C. J., in Furtado *v.* Rogers (1792), 3 Bos. & P. 191, to the effect that a marine insurance made on property that becomes hostile by the outbreak of a war, is not terminated by the outbreak of war, and continues to cover all losses not due to acts of the insurer's government. As to these acts, the insurance becomes inoperative; it is a tacit condition of the policy that these risks are not covered. "By the terms of the policy the underwriters certainly undertake to indemnify the plaintiff against all captors and detentions of princes, without any exception in respect of the acts of the government of their own nation. The question, then, is whether the law does not make that exception, and whether it be competent to an English underwriter to indemnify persons who may be engaged in war with his own sovereign against the consequences of that war? We are all of opinion that, on the principles of the English law, it is not competent to any subject to enter into a contract to do anything which may be detrimental to the interests of his own country, and that such a contract is as much prohibited as if it had been expressly forbidden by Act of Parliament. It is admitted that, if a man contract to do a thing which is afterwards prohibited by Act of Parliament, he is not bound by his contract. This was expressly laid down in Brewster *v.* Kitchell, 1 Salk. 198. And on the same principle, where hostilities commence between the country of the underwriter and the assured, the former is forbidden to fulfil his contract. With respect to the expediency of these insurances, it seems only necessary to cite a single line from Bynkershoek (Quaest. Juris Pub. lib. 1, c. 21; Marshall, p. 31), and part of a passage in Valin (Marshall, p. 32). The former says, 'Hostium pericula in se suscipere quid est aliud quam eorum commercia maritima promovere,' and the latter, speaking of the conduct of the English during the war of 1756, who permitted these insurances, says, 'The consequence was that one part of that nation restored to us by the effect of insurance what the other took from us by the rights of war.' . . . We are all of opinion that to insure enemies' property was at common law illegal, for the reasons given by the two foreign jurists to whom I have referred. If this be so, a contract of this kind entered into previous to the commencement of hostilities must be equally unavailable in a court of law, since it is equally injúrious to the interests of the country; for if such a contract could be supported, a foreigner might insure previous to the war against all the evils incident to war. But it is said that the action is suspended, and that the indemnity comes so late that it does not strengthen the resources of the enemy during the war. The enemy, however, is very little injured by captures for which he is sure at some period or other to be repaid by the underwriter. Since the case of Bell *v.* Potts (1800), 8 T. R. 548, it has been universally understood that all commercial intercourse with the enemy is to be considered as illegal at common law, though previous to that case a very learned judge (Mr. Justice Buller, in Bell *v.* Gilson, Bos. & P., vol. 1, p. 345) appears to have entertained doubts on that subject; and that consequently all insurances founded upon such intercourse are also illegal. Why are they illegal? Because they are in contravention of his Majesty's object in making war, which is by the capture of the enemies' property, and by the prohibition of any beneficial intercourse between them and his own subjects, to cripple their commerce. The same reasoning which influenced the Court of King's Bench in their decision in Bell *v.* Potts seems decisive in the present case. For, it being determined that during war all commercial intercourse with the enemy is illegal at common law, it follows that whatever contract tends to protect the enemy's property from the calamities of war, though effected antecedent to the war, is nevertheless illegal. . . . The ground upon which we decide this case is that, when a British subject insures against captures, the law infers that the contract contains an exception of captures made by the Government of his own country; and that if he had expressly insured against British capture, such a contract would be abrogated by the law of England. With respect to the argument insisted upon by way of answer to the public inconvenience likely to arise from permitting such contracts to be enforced, viz., that all contracts made with an enemy enure to the benefit of the King during the war, and that he may enforce payment of any debt due to an alien enemy from any of his subjects, we think it is not entitled to much weight. Such a course of proceeding never has been adopted; nor is it very probable that it ever will be adopted, as well from the difficulties attending it as the disinclination to put in force such a prerogative. The plaintiff, I am sorry to say, is not entitled to a return of premium, because the contract was legal at the time the risk commenced, and was a good insurance against all other losses but that arising from capture by the forces of Great Britain."

Accord: Brandon *v.* Curling (1803), 4 East, 410, where there is a dictum extending the doctrine to all losses occurring during hostilities. See also Janson *v.* Driefontein Consolidated Mines [1902] A. C. 484; Arnhold Karberg & Co. *v.* Blythe [1916] 1 K. B. 495.

Fire insurance.

The same general principles govern fire insurance contracts. The contract is not terminated, but is not applicable to losses arising from an exercise of belligerent rights by the government of the insurer. Cp. New York Life Insurance Co. *v.* Clopton (1870), 7 Bush (Ky.) 179, 3 Am. Rep. 290.

Life insurance.

In some States (e. g., Connecticut and Georgia) it has been held that the outbreak of war between the country of the insurer and the country of the insured terminates a contract of life insurance. Worthington *v.* Charter Oak Life Insurance Co. (1874), 41 Conn. 372, 19 Am. Rep. 495; Dillard *v.* Manhattan Insurance Co. (1871), 44 Ga. 119, 9 Am. Rep. 167. On the ground that keeping alive such contract is beneficial to the enemy country. Tait *v.* New York Life Insurance Co. (1873), 1 Flipp. 288, F. C. No. 13,726. And on the ground that it is a contract of continuing performance. Leathers *v.* Commercial Insurance Co. (1867), 2 Bush (Ky.) 296, 92 Am. Dec. 493, criticised in New York Life Insurance Co. *v.* Clopton (1870), 7 Bush (Ky.) 179, 3 Am. Rep. 290.

It has also been suggested by analogy to the doctrine applying to marine insurance contracts, that "if it insured the enemy against death in the enemy's army it would of course be void." Per Peckham, J., in Sands *v.* New York Life Insurance Co. (1872), 50 N. Y. 626, 10 Am. Rep. 535. See also New York Life Insurance Co. *v.* Clopton (1870), 7 Bush (Ky.) 179, 3 Am. Rep. 290; Hamilton *v.* Mutual Life Insurance Co. (1871), 9 Blatchf. 234, F. C. No. 5986.

The decided weight of authority, including the courts of last resort in New York, is to the effect that war merely suspends the contract of life insurance. Cohen *v.* New York Mutual Life Insurance Co. (1872), 50 N. Y. 610, 10 Am. Rep. 522; Sands *v.* New York Life Insurance Co. (1872), 50 N. Y. 626, 10 Am. Rep. 535; Manhattan Life Insurance Co. *v.* Warwick (1870), 20 Gratt. (Va.) 614, 3 Am. Rep. 218; Mutual Benefit Life Insurance Co. *v.* Atwood's Adm'x (1873), 24 Gratt. (Va.) 497, 18 Am. Rep. 652; New York Life Insurance Co. *v.* Hemdren (1873), 24 Gratt. (Va.) 536; Clemmitt *v.* New York Life Insurance Co. (1882), 76 Va. 355; Mutual Benefit Life Insurance Co. *v.* Hillyard (1874), 37 N. J. Law, 444, 18 Am. Rep. 741;

New York Life Insurance Co. *v.* Clopton (1870), 7 Bush (Ky.) 179, 3 Am. Rep. 290; Statham *v.* Insurance Co. (1871), 45 Miss. 581, 7 Am. Rep. 737; Hamilton *v.* Mutual Life Insurance Co. (1871), 9 Blatchf. 234, F. C. No. 5986.

The reasons in support of this view are fully stated by Peckham, J., in Sands *v.* New York Life Insurance Co. (1872), 50 N. Y. 626, 10 Am. Rep. 522: "The rule that makes such contracts as before alluded to (marine insurance, affreightment, partnership) has no application to life insurance." This contemplates no commercial intercourse, no aid to the enemy's commerce, no aid or comfort to the enemy, no violation of governmental policy. It is idle to say that it fosters or implies commercial intercourse. That money falls due annually to the defendant for the premiums, during the war, does not make the contract void any more than would installments of debt falling due upon a bond or note, given before the war, render the bond or note void. That is not commerce or commercial intercourse. The law does not presume that an honest debt due to an alien enemy will be paid over to him during the war, even though paid to his resident agent. (Buchanan *v.* Curry, 19 John. 137; Denniston *v.* Imbrie, 3 Wash. C. C. 403; Ward *v.* Smith, 7 Wall. 447.) Nor is it made void by the fact that the policy itself might become payable during the war. It would be no more void for that reason than if a note or bond given before the war should so fall due. The right to receive or collect it by the representatives of the assured is suspended until peace is restored. Why is not the note or the bond given before the war made void by the war? Simply because the interests of government do not require it. Their validity is not hostile to the government. Because it is the settled policy of government to impair, as little as possible, the private rights of citizens by national differences. (Clarke *v.* Morey, 10 John. 69; Bradwell *v.* Weeks, 3 John. 1; 7 Peters, 586.) That this contract of insurance cannot possibly operate in hostility to the government or its policy in the war, I think is entirely plain. . . . Again, it is not the purpose or policy of government to destroy mere non-combatants in the enemy's country—civilians, not belonging to the army. It is the rule of all civilized warfare to protect such persons—to shield them from injury. Then why should this insurance be condemned, as to its ultimate object? Again, it would not be claimed that an annuity purchased from an enemy before the war, and paid for, was made void by the war, though payable any number of times during the year. Yet the difference in principle is not apparent between that and the case at bar. The only difference in form is, that there the annuitant paid in full for the annuity, and receives back his annuity in installments. Here he pays by annual installments, and receives it back in gross by his representatives. If it be unlawful to pay the annuity during the war, by inter-territorial intercourse, then it must not be paid in that way. But there is no pretence of avoiding such an annuity by the war, because it might, by possibility, like any other debt, be improperly paid. Well considered cases hold that payment of these annual installments is not like the cases made void by war of affreightment and commercial copartnership, it being a single act, or an annual act, instead of a continued business. (Clopton *v.* N. Y. L. Ins. Co., 7 Bush (Ky.) 199; Hamilton *v.* Mut. L. Ins. Co., by Justice Blatchford, in southern district; Manhattan L. Ins. Co. *v.* Warwick, 20 Gratt. 614.) This is reasonable. But the stronger ground, in my opinion, is, that the contract having been made before the war, and it being of the character before described, its fulfillment afterward is not against the purpose or policy of the war. Cases of marine insurance, of insurance against capture by the enemy on the sea, and contracts of affreightment have no analogy to this. This contract therefore was neither illegal nor criminal."

"Both parties were under a legal disability—one to pay, the other to receive. This is the effect of the Act of Congress and of the state of war. The right of those interested in the policy to pay and save the insurance was just as strong as the right of the company to receive. Neither could enjoy the right. By what principle, then, can the company exact a strict compliance with the clause to pay at a definite time? The hands of each were tied, and the company could not complain of the other's default. According to all analogy and principles, the performance must be suspended under such circumstances. To dissolve, when the contract is part executed, would not place the parties in a just position; but to suspend will best reach the intention and spirit of the contract." Mutual Benefit Life Insurance Co. *v.* Hillyard (1874), 37 N. J. L. 444, 18 Am. Rep. 741.

This view has been adopted by the English courts during the present war. In Seligman *v.* Eagle Insurance Co. [1917] 1 Ch. 519, Neville, J., says: "The question here is this: A contract existed at the date of the outbreak of war that if the assured paid his premiums punctually during the whole of his life, then upon his death the company would pay a lump sum to his executors. It may be that by refusing to accept payment of the premium on the part of the policy-holder he would have been unable ever to recover against the company the lump sum contracted for, because it was a conditional contract, the contract being that payment should be punctually made. Now does the result of that intercourse, so to speak, involve anything illegal? The right of the policy-holder is clearly suspended during the war, and were he to die to-morrow his executors could recover nothing from the company; but whenever peace is restored between the countries normal relations in this regard will be resumed, and, although the right of the policy-holder is undoubtedly suspended, if the policy itself is not made void either at the time when war was declared or at the time when the current year of the policy ran out, I can see nothing illegal in the acceptance of the premiums by the company because no benefit can accrue to the enemy alien at all as the result of the payment of his premium; but what will result is that perhaps some day somebody who is not an enemy alien may have a right to sue the company for the amount assured. It seems to me this is one of those cases where the right is suspended."

The United States Supreme Court has adopted an intermediate position. In New York Life Insurance Co. *v.* Statham (1876), 93 U. S. 24, 23 L. ed. 789, it was said that so far as the contract was executory it was terminated, but so far as it is executed the insured had acquired rights in the reserve fund, and was a creditor as to this amount. The case, however, was decided by a divided court principally on the ground that war did not excuse a failure to pay premiums as they became due, because time was of the essence of the agreement to pay premiums, and that it would be inequitable to revive such contract after the war. The case is not an authority for the proposition that war terminates a contract of life insurance.

What has been said in regard to contracts of insurance with premiums payable at stated times applies with special force to cases where premiums have been fully paid. If death occurs during the war the full liability of the company arises, subject to the general rules governing payment to alien enemies. The principal question arises as to whether the prohibition of intercourse excuses payment of premiums when due. In a few cases it has been held that as the contract is one from year to year, with a privilege of renewal, the payment of the premium is a condition precedent to further liability on the part of the insurer and non-performance of this condition is not excused by war. Dillard *v.* Manhattan Life Insurance Co. (1871), 44 Ga. 119, 9 Am. Rep. 167; Worthington *v.* Charter Oak Life Insurance Co. (1874), 41 Conn. 372, 19 Am. Rep. 495; Tait *v.* New York Life Insurance Co. (1873), 1 Flipp. 288, F. C. No. 13,726. See also O'Reilly *v.* Mutual Life Insurance Co. (1866), 2 Abb. Pr. (N. S.) (N. Y.) 167.

Other courts have rejected the view that the contract is a continuing one, and hold that tender of the premiums after the war, with interest, revives the policy. In Cohen *v.* New York Mutual Life Insurance Co. (1872), 50 N. Y. 610, 10 Am. Rep. 522, Allen, J., said: "It is no answer to say that the plaintiff had only paid for the risk incurred from year to year. The annual premium paid during the first years of a life policy is in excess of the actual risk; and this excess is so much paid in advance for the greater risk during the later years in case of a prolonged life. The insurers would be greatly the gainers by avoiding all life policies upon young lives after the payment of the annual premiums for ten or fifteen years, terminating the risk before the greater hazard of loss, the result of advanced age, has been incurred. The contract was a continuing contract in the sense that it was to be performed in the future; but it was not a contract of continuance in its performance. The act to be performed by the defendant was a single act, the payment of a specified sum upon the happening of a certain event, and, in this respect, was like a covenant or promise to pay a sum of money at a day certain, or upon any condition lawful in itself. There is no pretence that a contract of the latter kind would be dissolved by war. The contract would remain; the remedy would be suspended. The act to be performed by the plaintiff was a single act, to be performed at stated periods, and was not like the contract of partnership and some other contracts which are continuous in their performance. . . . The question then remains, whether the non-payment of the annual premium during the years 1862, 1863 and 1864 involved a forfeiture of the policy and of all payments before then made. That such would be the effect of the non-performance of the condition, unless waived or legally excused, is not disputed; and unless the performance was waived by the defendant, or is legally excused by the existence of war, the plaintiff must fail in her action and submit to the loss resulting from the forfeiture. It must be borne in mind that the war was the act of the States, and that individual citizens are not identified with their governments so as to expose them to the rule of law that he who, by his own conduct, prevents the fulfillment of a contract or renders its performance impossible, shall not take advantage of a non-performance on the other side or excuse the non-performance upon his part. (Odlin *v.* Ins. Co. of Pennsylvania, 2 Wash. C. C. R. 312; Francis *v.* The Ocean Ins. Co., 6 Cow. 404; s. c., in error 2 W. R. 64.) The condition of affairs which made the payment of the premium by the plaintiff during the years named unlawful, and therefore impossible, was not created by the act or default of the plaintiff but resulted from the acts of the governments of which the respective parties were subjects. . . . No injustice is done the defendant in this case by permitting the plaintiff to make, now, the payments which she could not lawfully make between 1861 and 1865. The interest will compensate for the non-payment at the time, and the defendant, in legal contemplation, will be precisely in the situation it would have been had the money been paid on the law day. Manhattan

Life Insurance Co. *v.* Warwick (1870), 20 Gratt. (Va.) 614; N. Y. Life Ins. Co. *v.* Clopton (1870), 7 Bush (Ky.) 179; Hamilton *v.* N. Y. Mutual Insurance Co. (1871), 9 Blatchf. 234, F. C. No. 5986." Accord: Sands *v.* New York Life Insurance Co. (1872), 50 N. Y. 626, 10 Am. Rep. 535; Martine *v.* International Life Insurance Society (1873), 53 N. Y. 339, 13 Am. Rep. 529. The tender of premiums was held unnecessary where the insured had died. Connecticut Mutual Life Insurance Co. *v.* Duerson (1877), 28 Gratt. (Va.) 630.

In Abell *v.* Penn Mutual Life Insurance Co. (1881), 18 W. Va. 400, it was held that the policy could be revived only at the option of the insurer, and that if the insurer refused to revive it the insured was entitled to recover the premiums paid, after deducting the equitable value of the insurance actually carried. Per Green, J.: "It would be inequitable to revive a policy for life without the election of the company to so revive it, because if the assured, without such election, could revive such policy, it would be done in all cases in which the assured had died during the war, or at its close was in bad health, while in many cases, where the parties were in good health at the close of the war, they would find it to their advantage, or at least to their convenience, to take out new policies, perhaps in other companies, rather than to pay the arrearages on the old policy, and of course the company could not enforce the payment of such arrearages, and would be thus prejudiced thereby. Thus, only bad risks would be revived, while the good ones would never be heard of. If all lapsed policies were revived at the close of the war, the company might have but little to complain of; but if only the bad risks were continued in existence, they would be, perhaps, prejudiced. As, therefore, the lapsed life policy is not to be revived at the close of the war, only because such revival would be embarrassing and prejudicial to the company, if it did not elect to have it revived, it would seem to follow that if the company elect not to have it revived, it should be required, in thus annulling its contract, to restore the assured to the condition he was in before the contract was annulled by the election of the company; that is, by paying to him an annuity during his life sufficient, with the premiums he had by his contract to pay them, to enable him, as of the time of the forfeiture, to obtain a life policy for the same amount in some other company, or paying him in cash the present value of such annuity as of the time of such forfeiture. This is regarded as merely returning to him the money which he had actually paid, deducting the proper compensation to the company for the risk which had been incurred by it while the policy was in force."

The view of the United States Supreme Court is that if the insurer refuses to revive the policy the insured is entitled to its equitable value. In New York Life Insurance Co. *v.* Statham (1876), 93 U. S. 24, 23 L. ed. 789, Bradley, J., delivering the judgment of the court, said: "We are of opinion, therefore, that an action cannot be maintained for the amount assured on a policy of life insurance forfeited, like those in question, by non-payment of the premium, even though the payment was prevented by the existence of war. The question then arises—Must the insured lose all the money which has been paid for premiums on their respective policies? If they must, they will sustain an equal injustice to that which the companies would sustain by reviving the policies . . . Whilst the insurance company has a right to insist on the materiality of time in the condition of payment of premiums, and to hold the contract ended by reason of non-payment, they cannot with any fairness insist upon the condition as it regards the forfeiture of the premiums already paid; that would be clearly unjust and inequitable. The insured has an equitable right to have this amount restored to him, subject to a deduction for the value of the assurance enjoyed by him whilst the policy was in existence; in other words, he is fairly entitled to have the equitable value of his policy. . . . We are of opinion, therefore, first, that as the companies elected to insist upon the condition in these cases, the policies in question must be regarded as extinguished by the non-payment of the premiums, though caused by the existence of the war, and that an action will not lie for the amount insured thereon. Secondly, that such failure being caused by a public war, without the fault of the assured, they are entitled, *ex aequo et bono*, to recover the equitable value of the policies, with interest from the close of the war."

Waite, C. J., agreed with the majority of the court that the failure to pay the annual premiums as they matured put an end to the policy notwithstanding the fact that the default was occasioned by the war, but he dissented from that part of the judgment which held that under the circumstances there was an implied promise by the company to pay the assured the equitable value of the policy.

Strong, J., dissented on the ground that life insurance policies created merely unilateral obligations giving to the assured an option to pay premiums or not, and thus to continue the obligation of the insurance or to terminate it at his pleasure, and that the payment of each premium is a condition precedent to continued liability. He also dissented from the view that the company was bound to pay a surrender value.

Clifford and Hunt, JJ., dissented on the ground that where the parties to an executory money contract live in different countries, and the governments of those countries become involved in war with each other, the contract between such parties is suspended during the existence of the war, and revives upon a return of peace, and that this rule is as applicable to contracts of life insurance as to any other executory contract. Cp. Crawford *v.* Aetna Insurance Co. (1877), 2 Shann. (Tenn.) 329, holding that where a revivor of the policy is impossible owing to the death of the insured, the beneficiary can recover the equitable value of the policy as of the date when the first failure to pay the premium occurred.

Where the insurer has an agent in the country of the insured, and such agent has authority to collect premiums, a payment or tender to such agent is sufficient. Manhattan Life Insurance Co. *v.* Warwick (1870), 20 Gratt. (Va.) 614, 3 Am. Rep. 218; New York Life Insurance Co. *v.* Davis (1877), 95 U. S. 425, 24 L. ed. 453. As to the effect of war on agency, see *supra*, p. 269. As to the question whether the insurer may receive payment of premium from an enemy, see *supra*, p. 140.

Contracts relating to real property.

In contracts for the purchase of land, time is frequently of the essence of the contract. However, where this is not the case, such contracts are suspended. In Grinnan *v.* Edwards (1883), 21 W. Va. 347, a contract for the sale of land was entered into prior to the Civil War which provided that the purchase price should be paid in installments and that if payments were not made when due, the contract should be avoided and all payments made be forfeited as liquidated damages. The installments did not become due until after the Proclamation of the President of August 16, 1861, prohibiting intercourse between the Northern and Southern States. The parties at that time were divided by the line of war. It was held that the contract was suspended.

In Kiersted *v.* Orange & Alexandria R. R. Co. (1876), 54 How. Pr. (N. Y.) 29 [reversed on other grounds (1877), 69 N. Y. 343], the defendant was held liable for rent where possession of the premises was retained by an agent, the occupancy having commenced under the authority of the defendants given to the agent before the beginning of the war.

Contracts relating to personal property.

Contracts for the sale of personal property are not necessarily dissolved by war. Simrall, J., in Statham *v.* New York Life Insurance Co. (1871), 45 Miss. 581, 7 Am. Rep. 737, *arguendo*: "A contract made in 1860, by a citizen of this State, to deliver cotton to a citizen of New York, on the 1st day of October, 1861, at Vicksburg, is not necessarily annulled by the war. If delivery had been made to the agent of the purchaser at Vicksburg, it would have been a legal act contravening no policy or law of war, and the right of the seller to recover the price, after the war, could not be disputed. If the agent had attempted to transport the cotton to New York, pending the war, then and not until then would criminality attach."

Such was the case in Buchanan *v.* Curry (1821), 19 John. (N. Y.) 137, 10 Am. Dec. 200. Platt, J., said: "The first ground of defence was, that the war dissolved the contract; and that it became unlawful to fulfil such an agreement between the defendant, who was an alien enemy residing in Canada, and one of the plaintiffs, who was an American citizen resident here.

"To have transported the timber into Canada, pursuant to the contract, during the war, would have been unlawful; and so far, the contract was dissolved, or restrained, by the change from peace to war. But, upon the supposition, which is well warranted by the proof, that the defendant, an alien enemy residing in Canada, had an agent resident at French Mills, within the United States, who received the timber due on this contract, during the war, at places within the United States, I see nothing unlawful or inconsistent with the duty of allegiance, in the mutual performance of the contract, in such a manner, during the war. If such a contract had been entered into during the war, it would have been illegal and void. But this agreement appears to have been made before the war, in good faith, and according to the usual course of business. There is no ground for the position taken by the defendant's counsel, that it was unlawful for the contracting parties voluntarily to carry this prior agreement into effect, by delivering and receiving the timber within the United States, during the war. The war suspended the remedy by suit on the contract; but it is not unlawful, voluntarily to pay debts, or perform contracts to alien enemies, if the payment be made, or the duty be performed in our country.

"The rule is founded in public policy, which forbids, during war, that money, or other resources, shall be transferred, so as to aid or strengthen our enemies. The crime consists in exporting the money or property, or placing it in the power of the enemy; not in delivering it to an alien enemy, or his agent, residing here, under the control of our own government.

"Suppose an American citizen, previous to the war, had contracted to furnish a quantity of flour or cotton to a British merchant, to be delivered to his agent at the port of New York; would a declaration of war between the two nations render it unlawful to fulfil the contract? I think not. In such a case, the interests of commerce are perfectly compatible with the rights of war; and public policy does not forbid the transfer. None of the authorities cited, support the doctrine contended for by the defendant on that point."

In regard to an executory contract of sale the South Carolina court in

M'Grath & Jones *v.* Isaacs (1819), 1 Nott & McCord (S. C.) 563, (1822), 2 McCord (S. C.) 26, says: "(As this was executory), there was an end put to the contract by the supervening laws, preventing commerce between the two nations. If anything further was necessary to abrogate this contract, there can be no doubt but the declaration of war, in June, 1812, put a period to all commerce subsisting at that time between the subjects and citizens of the belligerent nations. . . . I am, therefore, most decidedly of opinion, that these prohibitory Acts and the declaration of war put an end to this contract to import these goods for the plaintiffs in this action. I say, not only prevented the lawful shipment of the goods, but also prevented the house in Liverpool from effecting the insurance which was an essential condition in the order when it was given: And this house in Liverpool would have been guilty of a breach of orders, if they had shipped these goods without insurance: . . . They would have been liable for all the consequences. For plaintiffs, a most ingenious argument was urged with great force and elequence by the counsel for plaintiffs. That all the acts restricting commerce were temporary in their nature, and not permanent; that the object of these laws was not to prevent trade, but to force the belligerents to do us justice. To this I answer, that, although the policy of these laws might have been the best that ever human wisdom of our country devised, yet as long as they remained in force, their restrictions and forfeitures were binding on the mercantile world, and no subsequent contingencies could vary them. The operation of law must remain in full force in all cases where it was declared to be binding, until repealed or altered: and any contravention of the law restricting trade and commerce, of the laws of nations, consequent upon a declaration of a war, must have been unlawful."

The leading case is Zinc Corporation, Ltd. *v.* Hirsch [1916] 1 K. B. 541, where the question arose as to whether a certain contract was dissolved or merely suspended by the outbreak of the war. By a contract made in 1908 and subsequently modified, the plaintiffs, an English company, agreed to sell and the defendants who resided and carried on business in Germany, agreed to purchase during the years 1910 to 1919 the whole of plaintiffs' products of zinc concentrates from their mine in Australia. During the terms of the contract, the plaintiffs were prohibited from selling zinc concentrates to any other person. By a clause of the contract, it was provided that in the event of (*inter alia*) acts of God, force majeure "or any cause beyond the control of either the sellers or the buyers, preventing or delaying the carrying out of this agreement, then this agreement shall be suspended during the continuance of any and every such disability."

The King's Bench Division, per Bray, J., held that neither the expression "force majeure" nor the general words included war as a cause of suspension. The Court of Appeal held that assuming that the war was the cause of suspension under the contract, this suspension was only of the deliveries of zinc concentrates and not of the whole contract, and that the effect of the prohibition against selling to any other person other than the defendants was to prevent the plaintiffs from using their resources for the benefit of their own country, and that therefore, the further performance of the contract became illegal because detrimental to the interests of the country and of assistance to the enemy, and, therefore, the contract was dissolved. It is to be noted that this case extended the doctrine of the earlier case, which declared the dissolution of a contract requiring the performance of an affirmative act, and extended this doctrine to negative clauses.

On appeal Swinfen Eady, L. J., said: "To recognize such a contract during war and to give effect to it by holding that it remained legally binding upon the contracting parties would be to defeat the object of this country in crippling the commerce of the enemy. 'It would be to undo by means of British tribunals the work done for the British nation by its naval or military forces': per Lord Lindley in Janson *v.* Driefontein Consolidated Mines ([1902] A. C. 507). Such an agreement is, in my opinion, void as tending to assist the King's enemies. To carry out such an agreement during the war, and to withdraw goods from commerce and preserve them for the enemy after the war, is little removed from actually trading with the enemy. In Furtado *v.* Rogers (3 Bos. & P. 191, 198) Lord Alvanley, in delivering the judgment of the Court of Common Pleas, said: 'We are all of opinion that on the principles of the English law it is not competent to any subject to enter into a contract to do anything which may be detrimental to the interests of his own country; and that such a contract is as much prohibited as if it had been expressly forbidden by Act of Parliament.' Moreover, upon what ground can an agreement not to sell goods during the war be binding in favour of a person who has become an alien enemy? He cannot during the war enforce such an agreement. The true answer must be that the contract has become, not suspended, but dissolved by the war."

Phillimore, L. J., said: "The defendants being German subjects, this is an agreement which cannot continue to be performed during the war. I do not think there is any doubt about this. It would involve commercial intercourse with the enemy, which is unquestionably unlawful: The Hoop (1 C. Rob. 196); Esposito *v.* Bowden (7 Ellis & B. 763); Furtado *v.* Rogers (3 Bos. & P. 191); Janson *v.* Driefontein Consolidated Mines ([1902] A. C.

484); Robson *v.* Premier Oil and Pipe Line Co. ([1915] 2 Ch. 124), and numerous other cases, English and American. The American cases up to that date are collected in Kershaw *v.* Kelsey (100 Mass. 561). This agreement being incapable of continued performance during the war, 'the end of which cannot be foreseen' [Esposito *v.* Bowden (7 Ellis & B. 792),] is *prima facie* dissolved, abrogated, or avoided by the war; see Esposito *v.* Bowden (Ibid. 783) and other cases. But it is said for the defendants that this which would be the general rule is not applicable to this case, because the parties have made provision for this event, and have provided for the suspension or putting to sleep of the agreement during war between the two countries, or for the postponement of its execution till peace returns. For this purpose clause 17 of the first agreement is relied on. (The Lord Justice read the clause.) It is said that either the words 'force majeure' or the words 'any cause beyond the control of either the sellers or the buyers preventing or delaying the carrying out of this agreement' introduce and cover the following cause, 'war between Great Britain and Germany,' and that the agreement is suspended (whatever that may mean) during the war. I will assume that this may be so, and I will assume that a provision that in the event of war between the two nations the execution of the contract shall be suspended or postponed till peace returns can be lawfully made. But do the parties by this clause mean suspension of the agreement or only suspension of the duty of making or taking delivery, as the case may be, with the further suspension, if deliveries are suspended, of the duty of producing? The defendants contend that the whole agreement is suspended. Again in their favour I put aside almost metaphysical objection that if the whole agreement is suspended the clause suspending it is also suspended. Is it possible to say that the words in clause 17 mean that the whole agreement is suspended? . . . I come, therefore, to the conclusion that clause 17 only provides for the suspension of deliveries and as incidental thereto of the duty of production, and not for suspension or postponement of the whole contract or of all the reciprocal duties under it. If this conclusion is reached the agreement cannot remain in force. It might perhaps be enough to say that it fell under the general rule expressed in Esposito *v.* Bowden (7 Ellis & B. 763). One might rely also upon the provision in clause 18 for storing up the metal for the enemy hereafter, as to which see the observations of Lord Alvanley in Furtado *v.* Rogers (3 Bos. & P. 199, 200). But there is a more serious objection in clause 3 of the second agreement: 'The sellers shall not so long as this agreement shall be in force sell any zinc concentrates to any person or persons, firm or firms or corporation or corporations other than the buyers.' By this clause the British subject is prevented from using his resources—

and how important these particular resources are the facts in the case show—for the benefit of his country. The enemy is allowed to tie his hands during the period of the war. If 'any act or contract which tends to increase the resources of the enemy' is unlawful, as was said in Kershaw *v.* Kelsey (100 Mass. 573), similarly any act or contract with the enemy which tends to diminish the resources of one's own country must be equally unlawful. If, therefore, one of the causes of suspension under clause 17 is war between Great Britain and Germany, the agreement would be an unlawful one. If, however, as seems reasonable, we are to construe the agreement *ut res magis valeat quam pereat*, we shall not admit this as one of the causes of suspension; and in that case the parties have not provided for the contingency of this war, and the ordinary rule prevails. The agreement has become incapable of performance by reason of the outbreak of war and has been dissolved."

Pickford, L. J., while not dissenting from the conclusion that the existence of the unsuspended terms of the agreement would involve trading with the enemy, was of opinion that the decision could be rested on the interpretation of that term of the contract which prevented the sale by the plaintiffs of any part of their concentrates during the war. "They cannot sell to the defendants, because that would be trading with the enemy, and they cannot sell to any one else, because to do so would be a violation of the terms of their contract. There is, therefore, a restriction, by reason of a contract existing between them and an alien enemy, upon the free exercise by British subjects of their right to deal in the merchandise produced by them, in this case a very appreciable proportion of the total production of what may be a very valuable article to this country. This seems to me to be a relation between a British subject and an alien enemy of a nature which is contrary to public policy, because it is calculated to be of detriment to the interests of this country and of assistance to the King's enemies."

In Textile Mfg. Co. *v.* Salomon Bros. (1915), 18 Bombay L. R. 105, a contract between an Indian company and a German company had been entered into for the purchase and sale of cotton waste calling for monthly deliveries during the year ending December, 1914. It was held that the contract was terminated. "There may be hardship in individual cases, but it is obvious that it is better to allow the parties, if they so wish, to renew their contracts at the end of the war rather than bind them to continue business under prior contracts when it is almost certain that the surrounding circumstances will be entirely altered."

A contract providing for a suspension of deliveries but not providing for a suspension of intercourse during the war, is dissolved. Rio Tinto Co. *v.* Eitel Bieber & Co. (1917), 33 T. L. R. 299.

Other commercial contracts.

It has been said that a contract guaranteeing interest and dividends is not avoided as between the guarantor and the guarantee. Lindenberger Cold Storage and Canning Co. *v.* Lindenberger (1916), 235 Fed. 542. Nor a contract of annuity. Cp. Sands *v.* New York Life Insurance Co. (1872), 50 N. Y. 626, 10 Am. Rep. 535.

But an exclusive sales agency is terminated. The plaintiffs were a firm of iron masters in England and the defendants were iron merchants at Lubeck in Germany. In July, 1911, the parties entered into a contract under which the plaintiffs were to give the defendants the sole right to sell on the Continent of Europe certain kinds of the plaintiffs' pig iron on condition that the defendants would do their utmost to develop the sale. The contract *inter alia* contained a condition that the defendants were to take a yearly quantity of not less than 3,000 tons of the iron in question, and that the agreement should continue until terminated by twelve months' notice on either side. There was also a clause providing that in case of strikes, lock-outs, whole or partial cessation of work through mishap or unforeseen cause, the plaintiffs should not be bound to deliver so long as the disturbance continued and the defendants should not be bound to take the delivery in case of any mobilization of war in which Germany might be interested, but only for the duration of such trouble. In August, 1914, when the war between Great Britain and Germany broke out, the contract was still running. The plaintiffs asked for a declaration that the contract was dissolved by the outbreak of war, the defendants contended that the contract was merely suspended. It was held that the outbreak of war ended the performance of the contract, and that the contract was dissolved. Distington Haematite Iron Co., Ltd. *v.* Possehl & Co. [1916] 1 K. B. 811.

A subscription contract for shares in a corporation, completed by an allotment letter, but where the further instalments to be paid before a share certificate is issued have not been paid in, would probably be rescinded by the outbreak of a war, and the intending purchaser would be entitled to a return of the amount paid by him to the company. Chadwick, Foreign Investments in Time of War, in 20 Law Quarterly Review, 167.

However, where a contract involves no intercourse with the enemy, it is merely suspended. "Suppose a French banker to have commissioned an English painter to paint an historical canvas with three or four hundred figures, a work that would occupy the artist for two or three years, the outbreak of hostilities between the two countries would make no difference whatever to the obligations of the artist. There is no authority even for saying that the execution of the commission could properly be laid aside during the period of hostilities, so as to excuse delay in delivery after the conclusion of peace. It is not accurate to say that the execution of the contract is suspended during war. The right of the alien enemy to sue is indeed suspended, but that appears to be all. The obligation persists, though not the liability." Baty, Intercourse with Alien Enemies in 31 Law Quarterly Review, 30. But the Act prohibits carrying on, completing or performing a contract. Sections 2, 3.

Rights may arise under an implied contract where the facts creating the obligation took place before the war, and such contract (in this case for use and occupation) may be of a nature so as not to be dissolved by war. Kiersted *v.* Orange & Alexandria R. R. Co. (1876), 54 How. Pr. (N. Y.) 29.

Non-commercial contracts.

Contracts to marry are not dissolved, unless the length of the war is such as to render it inequitable to continue to hold the parties bound to their agreement. Cp. Trotter (Supp.) 60.

Suspension of statute of limitations.

(c) The running of any statute of limitations shall be suspended with reference to the rights or remedies on any contract or obligation entered into prior to the beginning of the war between parties neither of whom is an enemy or ally of enemy, and containing any promise to pay or liability for payment which is evidenced by drafts or other commercial paper drawn against or secured by funds or other property situated in an enemy or ally of enemy country, and no suit shall be maintained on any such contract or obligation in any court within the United States until after the end of the war, or until the said funds or property shall be released for the payment or satisfaction of such contract or obligation: *Provided, however,* That nothing herein contained shall be construed to prevent the suspension of the running of the statute of limitations in all other cases where such suspension would occur under existing law.

"The running of any statute of limitations . . . of such contract or obligation."

The Act does not, like the Act of Congress of June 11, 1864, aim to suspend the statutes of limitations generally. It is limited to cases where all parties are non-enemy, and where the transaction is a promise to pay or a liability for payment evidenced by commercial paper drawn against or secured by funds situated in an enemy or ally of enemy country.

"Nothing herein contained. . . would occur under existing law."

The Act accordingly leaves in full force and effect the various State statutes and the rules of the common law relating to judicial proceedings where alien enemies are parties thereto.

During the Revolutionary War, several States passed laws suspending the statutes of limitations, and similar statutes were passed during the Civil War. On June 11, 1864, Congress passed an act suspending statutes of limitations as regards actions between citizens of the United States and those of the Confederate States. This Act (38th Cong. 1st Sess. c. 118) is as follows: "That, whenever, during the existence of the present rebellion, any action, civil or criminal, was accrued against any person who, by reason of resistance to the execution of the laws of the United States, or the interruption of the ordinary courts of judicial proceedings cannot be served with process for the commencement of such action or the arrest of such person, or whenever, after such action, civil or criminal, shall have accrued, such person cannot, by reason of such resistance of the laws, or such interruption of judicial proceedings, be arrested or served with process for the commencement of the action, the term during which such person shall so be beyond the reach of legal process shall not be deemed or taken as any part of the time limited by law for the commencement of such action."

The Act was liberally construed in favor of persons whose rights and remedies were suspended by the war, and the same rule of construction should apply to the Act of 1917. In construing the Act of 1864, Strong, J., in United States *v.* Wiley (1870), 11 Wall. 508, 20 L. ed. 211, says: "The purpose of the Act of 1864 was manifestly remedial, to preserve and restore rights and remedies suspended by the war. Hence it is entitled to liberal construction in favor of those whose rights and remedies were in fact suspended. The mischief it sought to remove would be but half remedied were it construed as contended for by the plaintiffs in error. It is not, therefore, to be admitted that the intention of Congress was to prescribe a deduction only of the time which might elapse after the passage of the act, during which it might be impossible to serve process. On the contrary, we are of opinion that the statute requires all the time to be deducted during which the suit could not be prosecuted by reason of resistance to the laws, or interruption of judicial proceedings, whether such time was before or after its passage. Such we have decided to be its meaning at the present term, in Stewart *v.* Kahn, and it is unnecessary to repeat the reasons given for the decision."

A similar rule of construction is laid down by Mr. Justice Swayne in Stewart *v.* Kahn (1870), 11 Wall. 493, 20 L. ed. 176: "The Act of 1864 consists of a single section containing two distinct clauses. The first relates to cases where the cause of action accrued subsequent to the passage of the Act. The second to cases where the cause of action accrued before its passage. The case before us belongs to the latter class. The first clause of the statute may, therefore, be laid out of view. The second enacts that 'whenever, after such action—civil or criminal—such have accrued, and such person cannot, by reason of such resistance of the laws, or such interruption of judicial proceedings, be arrested or served with process for the commencement of the action, the time during which such person shall be beyond the reach of legal process shall not be deemed or taken as any part of the time limited by law for the commencement of such action.' A severe and literal construction of the language employed might conduct us to the conclusion, as has been insisted in another case before us, that this clause was intended to be made wholly prospective as to the period to be deducted, and that it has no application where the action was barred at the time of its passage. Such, we are satisfied, was not the intention of Congress. A case may be within the meaning of a statute and not within its letter, and within its letter and not within its meaning. The intention of the law-maker constitutes the law. The statute is a remedial one and should be construed liberally to carry out the wise and salutary purposes of its enactment. The construction contended for would deny all relief to the inhabitants of the loyal States having causes of action against parties in the rebel States if the prescription had matured when the statute took effect, although the occlusion of the courts there to such parties might have been complete from the beginning of the war down to that time. The same remarks would apply to crimes of every grade if the offenders were called to account under like circumstances. It is not to be supposed that Congress intended such results. There is no prohibition in the Constitution against retrospective legislation of this character. We are of the opinion that the meaning of the statute is, that the time which elapsed while the plaintiff could not prosecute his suit, by reason of the rebellion, whether before or after the passage of the act, is to be deducted. Considering the evils which existed, the remedy prescribed, the object to be accomplished, and the considerations by which the law-makers were governed—lights which every court must hold up for its guidance when seeking the meaning of a statute which requires construction—we cannot doubt the soundness of the conclusion at which we have arrived."

Provision has sometimes been made in treaties of peace to the effect that debts owing to creditors in the opposing belligerent countries shall not be deemed to have become barred during war under statutes of limitation. Thus in the Definitive Treaty of Peace of September 3, 1783, between the United States and England, "it is agreed, that creditors on either side shall meet with no lawful impediment to the recovery of the full value, in sterling money, of all *bona fide* debts heretofore contracted." This provision was confirmed by the Convention of January 8, 1802. See Hopkirk *v.* Bell (1806), 3 Cr. 454, 2 L. ed. 497.

Under the case law and existing statutes, great diversity of view is shown. The question as to whether the statutes of limitation are suspended during war in favor of an alien enemy, does not appear to have been decided by the English courts. In DeWahl *v.* Braune (1856), 1 H. & N. 178, Lord Bramwell says: "It may be that the effect would ultimately be to bar the action, by reason of the statute of limitations but the inconvenient operation of that statute is no answer." In the course of the arguments in this case, counsel quoted from 2 Kent's Commentaries, 155, to which Pollock, C. B., replied: "A good deal of what is said there is founded on American views of international law which are not recognized or adopted here." Anson, Contracts (13th ed.), 129, thinks this dictum decisive as to the English law. The same view is held by Lindley, Company Law (6th ed.), I., 53, note (g); Page, War and Alien Enemies, 2d ed. 83. On the other hand, Westlake, International Law, II, 49, and Pollock, Principles of Contract (8th ed.), 86 n. take an opposite view. "The opinion of Baron Bramwell is merely an *obiter dictum*. . . . In spite of the text books it is conceived that should the question really come before an English tribunal, it would be held that the statute of limitation does not run during hostilities." Chadwick, Foreign Investments in Time of War, in 20 Law Quarterly Review, 167.

One of the early American cases is Wall *v.* Robson (1820), 2 Nott & M. (S. C.) 498; 10 Am. Dec. 623. Here an action was commenced on

October 20, 1818, on a bill of exchange drawn March 2, 1812, in favor of the plaintiff, a British subject, upon the defendant, an American citizen residing in South Carolina, payable thirty days after sight, accepted by the defendant on April 25, 1812, and protested for non-payment on May 28, 1812. The defendant claimed that the action, not having been commenced within five years, was barred by the statute of limitations; and the question was, whether the operation of the statute was suspended during the war between the United States and Great Britain, which continued from June 18, 1812, to February 17, 1815. The recorder decided, upon a special verdict, that the statute did not run during the period of the war, and gave judgment for the plaintiff, from which the defendant appealed. It was held that limitation did not run. Per Bay, J.: "War does not deprive the individual, in an enemy's country, of his right or demand; it only suspends it until the courts of justice are open to enable him to recover it. The privilege of commerce has secured this right to the subjects of all nations; and the state which should refuse this right at the present day would not deserve to be ranked among those of the civilized world. Upon the return, therefore, of the day of peace all those rights recommence which had lain dormant, or had been suspended during the period of war. A contrary doctrine would enable every debtor in a country lately restored to peace, where there had been commercial dealings before the war, to cheat and defraud his just and *bona fide* creditors, as was very well observed in the argument, since every nation in its political capacity disdains or disclaims every idea of confiscating commercial debts to its own use. If, then, it is clear and evident both by the common law and the law of courtesy of nations, that there is no national principle existing to bar or prevent an alien in a foreign country from recovering a just debt after the restoration of peace, shall it be said or allowed that any municipal regulation of one of the states shall have that effect, where the general law of nations and those of foreign commerce say the contrary? I very much question the power or authority of any state or nation at this enlightened period of the world to pass such a law, if they were disposed to do such an act of injustice. But it is said our statute of limitations will have that effect, which brings me to consider, thirdly, the nature and operation of that act. I have already given my ideas of the general end and design of the statutes of limitations wherever they have prevailed. I shall now confine myself more particularly to our Limitation Act of 1712, 2 Brev. Dig. 21. And here I would observe that I consider it as a mere municipal regulation, founded on local policy, which can have no force or bearing abroad, and with which foreign or independent governments have no concern. But it has been contended that when it once begins to run, it must run on, notwithstanding any subsequent disability, till it runs out, and this, too, as well against foreigners as our own citizens, and as well during war as in peace. I admit that it is, in general, a good rule, but to every general rule there are exceptions, arising from necessity or causes beyond the reach or control of municipal regulations. The intent and meaning of the above general rule, when confined to its principal and proper limits, I take to be this, as every general rule ought to be founded on right and reason, that where the laws of the country afford a redress for every injury, and recovery of every just right, and the courts of justice are open to administer redress, the party entitled to a remedy, or to a just demand, who will not pursue it within the times mentioned in the act, and use that diligence which the law requires of him for the recovery of it, in such cases, the statute once beginning to run shall run on until the party is barred of the right or remedy, and any other construction of the rule would, in my opinion, be subversive of every principle of justice. For it surely will never be contended that municipal regulations or legal statutes can control the destinies of nations, or deprive the citizens of a belligerent of rights they were entitled to before the declaration of war."

The general principles underlying this doctrine are also well stated in Nicks *v.* Martindale (1824), Harp. (S. C.) 136, 18 Am. Dec. 647, where Colcock, J., says: "The general rule on this subject is, that when the statute begins to run it shall not be impeded in its operation by any disabilities. But to this rule there are exceptions, some of which are enumerated in the statute, and one or two which arise from a construction of the statute. There is certainly nothing in the act itself which will authorize the court in saying that its operation shall be suspended until administration granted; nor can this be brought within any reasonable or just consideration of the act. Where, by positive enactment, one is prevented from suing or being sued, it is reasonable to say the operation of the statute shall be suspended; but where the fault lies with the party himself, whose rights are affected, this reason does not operate. This court has decided that the clause in the executor's act which says an action shall not be brought against the estate of a deceased person for nine months, is a suspension for that time of the statute; and so where, by the common law, an alien enemy is prevented from suing, the statute is suspended during the war."

The leading case is Hanger *v.* Abbott (1867), 6 Wall. 532, 18 L. ed. 939. In this case it was held that such suspension arose independent of the Act of Congress of June 11, 1864. Per Clifford, J.: "Grant that the law of nations is that debts due from individuals to the enemy may, by the rigorous application of the rights of war, be confiscated, still it is a right which is seldom or never exercised in modern warfare, and the rule is universally acknowledged that if the debts are not so confiscated, the right to enforce payment revives when the war has terminated. Vattel says the sovereign may confiscate debts due from his subjects to the enemy, if the term of payment happens in time of war, or at least he may prohibit his subjects from paying while the war continues, but at present a regard to the advantages and safety of commerce induces a less rigorous rule. Where a debt has not been confiscated, the rule is undoubted that the right to sue revives on the restoration of peace, and Mr. Chitty says that with the return of peace we return to the creditor the right and the remedy. Unless we return the remedy with the right the pretence of restoring the latter is a mockery, as the power to exercise it with effect is gone by lapse of time during which both the right and the remedy were suspended. . . . Down to 1737, says Chancellor Kent, the opinion of jurists was in favor of the right to confiscate, and many maintained that such debts were annulled by the declaration of war. Regarding such debts as annulled by the war, the law-makers of that day never thought of making provision for the collection of the same on the restoration of peace between the belligerents. Commerce and civilization have wrought great changes in the spirit of nations touching the conduct of war, and in respect to the principles of international law applicable to the subject. . . . Total inability on the part of an enemy creditor to sustain any contract in the tribunals of the other belligerent exists during war, but the restoration of peace removes the disability, and opens the doors of the courts. Absolute suspension of the right, and prohibition to exercise it, exist during war by the law of nations, and if so, then it is clear that peace cannot bring with it the remedy if the war is of much duration, unless it also be held that the operation of the statute of limitation is also suspended during the period the creditor is prohibited, by the existence of the war and the law of nations, from enforcing his claim. Neither laches nor fraud can be imputed in such a case, and none of the reasons on which the statute is founded can possibly apply, as the disability to sue becomes absolute by the declaration of war, and is a conclusion of law. Ability to sue was the status of the creditor when the contract was made, but the effect of war is to suspend the right, not only without any fault on his part, but under circumstances which make it his duty to abstain from any such attempt. His remedy is suspended by the acts of the two governments and by the law of nations, not applicable at the date of the contract, but which comes into operation in consequence of an event over which he has no control."

The decision in Hanger *v.* Abbott was followed in United States *v.*

Wiley (1870), 11 Wall. 508, 20 L. ed. 211; The Protector (1869), 9 Wall. 687, 19 L. ed. 812; (1870), 12 Wall. 700, 20 L. ed. 463; and, with the exception of the State of Louisiana, in the absence of statute, it may be regarded as a settled rule in the United States that the periods of limitation are suspended during war and this even though the limitation began to run before the war. Buswell on Limitations, section 129; Wood on Limitations, section 6; Williamson *v.* McCrary (1878), 33 Ark. 470; Mixer *v.* Sibley (1869), 53 Ill. 61; Perkins *v.* Rogers (1871), 35 Ind. 124, 9 Am. Rep. 639; Selden *v.* Preston (1874), 11 Bush (Ky.) 191; McMerty *v.* Morrison (1876), 62 Mo. 140; Hill *v.* Biggariot (1869), 7 Phila. (Pa.) 159; Ahnert *v.* Zaun (1876), 40 Wis. 622.

But the statutes of limitation are suspended only during the time the creditor is under a disability to sue. The moment he ceases to be an alien enemy, e. g., by establishing his residence in a neutral country, the statute runs against him. Zacharie *v.* Godfrey (1869), 50 Ill. 186.

The Louisiana courts do not recognize this doctrine: Smith *v.* Stewart (1869), 21 La. Ann. 67, 99 Am. Dec. 709; Bartley *v.* Bosworth's Succession (1869), 21 La. Ann. 126; Sampson *v.* Gillis (1870), 22 La. Ann. 591; Perrett *v.* Lee (1871), 23 La. Ann. 553; Winn's Succession (1881), 33 La. Ann. 1392, overruling Aby *v.* Brigham (1876), 28 La. Ann. 840, and declining to follow Stewart *v.* Kahn (1870), 11 Wall. (U. S.) 493, 20 L. ed. 176. This is especially true where the suit could have been brought before the war. Mechanics, etc., Bank *v.* Saunders (1869), 21 La. Ann. 106; Lemon *v.* West (1868), 20 La. Ann. 427; Norwood *v.* Mills (1868), 20 La. Ann. 422; Marcy *v.* Steele (1868), 20 La. Ann. 413; Barriere *v.* Stein (1868), 20 La. Ann. 397; Payne *v.* Douglass (1868), 20 La. Ann. 280; Rabel *v.* Pourciau (1868), 20 La. Ann. 131; Munson *v.* Robertson (1867), 19 La. Ann. 170.

A distinction must, however, be made between ordinary statutes of limitations and statutes which by their own terms, require a different interpretation. Thus, it has been held that in the presentation of claims, before the United States Court of Claims, a period of six years after the accrual of the right and in which claims must be filed are not suspended by the existence of the war. The reason is that the statute establishing the Court of Claims, creates certain disabilities and expressly excludes all others. Kendall *v.* United States (1882), 107 U. S. 123, 27 L. ed. 437.

The United States Patent Law, as amended by the Act of March 3, 1897, chapter 391, section 6 (29 St. L. 694) provides that "in any suit or action brought for the infringement of any patent, there shall be no recovery of profits or damages for any infringement committed more than six years before the filing of the bill of complaint or the issuing of the writ in such suit or action, and this provision shall apply to existing causes of action." It has been held that this amendment is not a statute of limitation but a qualification upon the right of property. Peters *v.* Hanger (1904), 134 Fed. 586. The statutory period, therefore, runs against an enemy or ally of enemy both for the reason that it is not a statute of limitation, and because under section 10 (g) of the Trading with the Enemy Act such hostile persons may bring suit for infringement.

It has also been suggested by a Canadian court, evidently under the influence of the views entertained by some of the English authorities above mentioned, that the statutory period during which an action must be brought under a Fatal Accident Act runs against a non-resident alien enemy during war. Dangler *v.* Hollinger Gold Mines, Ltd. (1915), 34 Ont. L. R. 34.

So also, where under the terms of a contract certain acts must be done within a specified period, the language of the contract may be such as to exclude a suspension by reason of a war. In Semmes *v.* Hartford Insurance Co. (1871), 13 Wall. 158, 20 L. ed. 490, the plaintiff sued on October 31, 1866, upon a policy of insurance, for a loss which occurred on January 5, 1860. The policy as declared on showed as a condition of the contract, that payment of losses should be made within sixty days after the loss should have been ascertained and proved. The company replied that by the policy itself it was expressly provided that no suit for the recovery of any claim upon the same should be sustainable in any court, unless such suit should be commenced within the term of twelve months next after any loss or damage should occur; that in case such suit should be commenced after the expiration of twelve months next after such loss or damage should have occurred, the lapse of time should be taken and deemed as conclusive evidence against the validity of the claim thereby attempted to be enforced; and that the plaintiff did not commence this action against the defendants within said period of twelve months next after the loss occurred.

Miller, J., delivered the opinion of the court: "It is not necessary, in the view which we take of the matter, to inquire whether the Circuit Court was correct in the principle by which it fixed the date, either of the commencement or cessation of the disability to sue growing out of the events of the war. For we are of opinion that the period of twelve months which the contract allowed the plaintiff for bringing his suit does not open and expand itself so as to receive within it three or four years of legal disability created by the war and then close together at each end of that period so as to complete itself, as though the war had never occurred. It is true that, in regard to the limitation imposed by statute, this court has held that the time may be so computed, but there the law imposes the limitation and the law imposes the disability. It is nothing, therefore, but a necessary legal logic that the one period should be taken from the other If the law did not, by a necessary implication, take this time out of that prescribed by the statute, one of two things would happen; either the plaintiff would lose his right of suit by a judicial construction of law which deprived him of the right to sue yet permitted the statute to run until it became a complete bar, or else, holding the statute under the circumstances to be no bar, the defendant would be left, after the war was over, without the protection of any limitation whatever. It was therefore necessary to adopt the time provided by the statute as limiting the right to sue, and deduct from that time the period of disability. Such is not the case as regards this contract. The defendant has made its own special and hard provision on that subject. It is not said, as in a statute, that a plaintiff shall have twelve months from the time his cause of action accrued to commence suit, but twelve months from the time of loss; yet by another condition the loss is not payable until sixty days after it shall have been ascertained and proved. The condition is that no suit or action shall be sustainable unless commenced within the time of twelve months next after the loss shall occur, and in case such action shall be commenced after such loss, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim. Now, this contract relates to the twelve months next succeeding the occurrence of the loss, and the court has no right, as in the case of a statute, to construe it into a number of days equal to twelve months, to be made up of the days in a period of five years in which the plaintiff could lawfully have commenced his suit. So also if the plaintiff shows any reason which in law rebuts the presumption, which, on the failure to sue within twelve months, is, by the contract, made conclusive against the validity of the claim, that presumption is not revived again by the contract. It would seem that when once rebutted fully nothing but a presumption of law or presumption of fact could again revive it. There is nothing in the contract which does it, and we know of no such presumptions of law. Nor does the same evil consequence follow from removing absolutely the bar of the contract that would from removing absolutely the bar of the statute, for when the bar of the contract is removed there still remains the bar of the statute, and though the plaintiff may show by his disability to sue a sufficient answer to the twelve months provided by the contract, he must still bring his suit within the reasonable time fixed by the legislative authority, that is, by the statute of limitations. We have no doubt that the disability to sue imposed on the plaintiff by the war relieves him from the consequences of failing to bring suit within twelve months after the loss, because it rendered a compliance with that condition impossible and removes the presumption which that contract says shall be conclusive against the validity of the plaintiff's claim. That part of the contract, therefore, presents no bar to the plaintiff's right to recover."

State statutes relating to limitation of actions.

There is considerable diversity in the statutory provisions. Some of the principal statutes are set forth below:

Alabama. (Code 1907, section 4862):

"When the United States is at war with a foreign country, and either party to a contract is a subject or citizen thereof, the time of the continuance thereof of the war is not computed as part of the time limited for the commencement of the suit."

It is to be noted that the statute operates in favor of a person of enemy nationality even when resident in the United States or within a non-enemy country. It does not operate in favor of an American citizen or a neutral residing in an enemy country, nor does it apply to the subjects of an ally of enemy.

Alaska. (Compiled Laws 1913, sections 850, 852.)

This is identical with the North Carolina law, *infra.*

California. (Code of Civil Procedure, section 354):

"When a person is an alien subject or citizen of a country at war with the United States the time of the continuance of the war is not part of the period limited for the commencement of the action."

The disability must exist when the right of action accrues. C. C. P., section 357. See notes to Alabama statute, *supra.*

Idaho. (Revised Code 1908, sections 4072, 4075.)

This is identical with the California law.

Kentucky. (Carroll's Kentucky Statutes, section 2534):

"When the plaintiff is an alien, and a subject or citizen of a country at war with the United States, the time of the continuance of the war is not to be computed as part of the period limited for the commencement of the action."

The disability must exist when the right of action accrues. Section 2537. See notes to Alabama statute, *supra.*

Maine. (Revised Statutes 1903, c. 83, section 96):

"If a person is disabled from prosecuting an action in this State by reason of being an alien subject or citizen of a country at war with the United States, the time during which such war continues shall not be a part of the period herein limited for the commencement of any of said actions."

This statute and the similar one of Massachusetts represent the American common-law doctrine. Neither the Maine nor the Massachusetts statute covers the case of American citizens or neutrals disabled from prosecuting an action by reason of residence in an enemy country.

Massachusetts. (Revised Laws 1902, c. 202, section 8):

"If a person is disabled from commencing an action by reason of his being a subject or citizen of a country which is at war with the United States, the time of the continuance of such war after the cause of action accrues shall be excluded in determining the period herein limited for the commencement of the action."

See note to Maine statute.

Michigan. (5 Howell's Michigan Statutes, section 14142):

"When any person shall be disabled to prosecute an action in the courts of the State by reason of his being an alien, subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed a part of the respective periods herein limited for the commencement of any of the actions before mentioned."

See note to Maine statute.

Minnesota. (General Statutes of Minnesota, 1913, section 7710):

"Any of the following grounds of disability, existing at the time when a cause of action accrued shall suspend the running of the period of limitation until the same is removed: Provided, that such period, except in the case of infancy shall not be extended for more than five years, nor in any case for more than one year after the disability ceases: . . . (That the plaintiff) 4. Is an alien and the subject or citizen of a country at war with the United States."

The disability must exist at the time the cause of action accrues. Kelley *v.* Gallup (1897), 67 Minn. 169.

Missouri. (Revised Statutes 1909, section 1898):

"Whenever any person shall be disabled to prosecute in the courts of this State by reason of his being an alien, subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed any part of the respective periods limited in sections 1878 to 1897 or the commencement of any action."

See note to Maine statute. The disability must exist at the time the right of action accrued. Revised Statutes 1909, section 1904.

Nevada. (Revised Laws 1912, section 4979):

"When a person shall be an alien subject or citizen of a country at war with the United States the time of the continuance of the war shall not be a part of the period limited for the commencement of the action; provided, however, that nothing in this section shall be so construed as to consider any citizen or person of any State engaged in rebellion against the United States as an alien."

See note to Maine statute. The disability must exist when the right of action accrues. Revised Laws, section 4982.

New York. (Code of Civil Procedure, section 404):

"Where a person is disabled to sue in the courts of the State, by reason of either party being an alien subject or citizen of a country at war with the United States, the time of the continuance of the disability is not a part of the time limited for the commencement of the action."

See note to Maine statute. A person cannot avail himself of a disability, unless it existed when his right of action or of entry accrued. C. C. P. 408.

North Carolina. (Revision of 1908, section 379):

"When a person shall be an alien subject, or a citizen of a country at war with the United States the time of the continuance of the war shall not be part of the period limited for the commencement of the action."

See note to Maine statute. The disability must exist when the right of action accrued. Revision of 1908, section 365.

North Dakota. (Compiled Laws, 1913, sections 7387, 7390.)

Substantially identical with North Carolina law.

Oregon. (Lord's Oregon Laws, sections 19, 22.)

Substantially identical with Wisconsin law.

South Carolina. (Code of Civil Procedure, 1912, section 150.)

Substantially identical with North Carolina law.

South Dakota. (Compiled Laws, 1913, Code of Civil Procedure, section 72):

"When a person shall be an alien subject, or a citizen of a country at war with the United States, the time of the continuance of the war is part of the period limited for the commencement of the action."

The phraseology of this statute is noteworthy. The law in terms provides for the running of the statute of limitations during war.

Utah. (Compiled Laws, 1907, sections 2892, 2895.)

Identical with California law.

Vermont. (Public Statutes, 1906, section 1560):

"When a person is disabled to prosecute an action by being a subject or citizen of a country at war with the United States, the time of the continuance of such war shall not be deemed part of the respective periods limited in this chapter for the commencement of actions."

See note to Maine statute.

Wisconsin. (Statutes 1915, section 4232):

"When a person shall be an alien subject or a citizen of a country at war with the United States the time of the continuance of the war shall not be a part of the time limited for the commencement of the action."

The disability must exist when the right of action accrued. Statutes, 1915, section 4237.

Claims against property deposited with Custodian. Right to sue.

Sec. 9. That any person, not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy, or ally of enemy, whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States, may file with the said Custodian a notice of his claim under oath and in such form and containing such particulars as the said Custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application, or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if suit shall be so instituted then the money or other property of the enemy, or ally of enemy, against whom such interest, right, or title is asserted, or debt claimed, shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the Alien Property Custodian or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant, or suit otherwise terminated.

As to actions against enemy companies or persons doing business in the United States, see section 4 (a).

Where the payment or transfer to the claimant is ordered, the consent of all parties, including enemy parties, is required.

Property not subject to lien while with Custodian.

Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

This section shall not apply, however, to money paid to the Alien Property Custodian under section ten hereof.

Enemy may apply for letters patents.

Sec. 10. That nothing contained in this Act shall be held to make unlawful any of the following acts:

(a) An enemy, or ally of enemy, may file and prosecute in the United States an application for letters patent, or for registration of trade-mark, print, label, or copyright, and may pay any fees therefor in accordance with and as required by the provisions of existing law and fees for attorneys or agents for filing and prosecuting such applications. Any such enemy, or ally of enemy, who is unable during war, or within six months thereafter, on account of conditions arising out of war, to file any such application, or to pay any official fee, or to take any action required by law within the period prescribed by law, may be granted an extension of .nine months beyond the expiration of said period, provided the nation of which the said applicant is a citizen, subject, or corporation shall extend substantially similar privileges to citizens and corporations of the United States.

" Enemy or ally of enemy may file."

In the absence of an authority such as is conferred by this Act, an enemy may not file an application for letters patent or for the registration of trade-marks or copyright. Thus, during the Spanish-American War, non-resident Spanish subjects were held not to be allowed to acquire the privileges of copyright. 22 Op. Atty.-Gen. (1898), 268.

The United States and Great Britain (including most of the principal British Overseas Possessions) are parties to the Convention for International Protection of Industrial Property, concluded at Paris, March 20, 1883. This Convention was ratified by the United States Senate on March 29, 1887, and proclaimed June 11, 1887. It was modified by the Madrid Convention of April 15, 1891, ratified March 30, 1892, and proclaimed June 22, 1892, and the Additional Act concluded at Brussels on December 14, 1900, ratified April 16, 1901, and proclaimed August 25, 1902. The German Empire, Austria and Hungary are also parties to these conventions. The United States did not ratify the Washington Convention of June 2, 1911.

Under the terms of these conventions, reciprocal rights of priority in regard to the filing of applications for patents of invention, industrial models, designs, and trade or commercial marks are granted in favor of the citizens or subjects of the countries adhering to the conventions. A separate patent convention was entered into between the United States, and the German Empire on February 23, 1909, and ratified April 20, 1909, and a Trade-Marks Convention between the United States and Austria-Hungary on November 25, 1871, ratified January 27, 1872.

The international protection of copyright is provided for in the Berne International Copyright Convention of September 5, 1887, with the Additional Articles signed at Paris on May 4, 1896, and the Berlin Convention of November 13, 1908, with its Additional Protocol of March 20, 1914. Great Britain and some of the British Overseas Possessions, as well as the German Empire, are parties to these conventions. The United States, Austria, and Hungary are not parties thereto.

A treaty relating to copyright was entered into between the United States and Hungary on January 30, 1912, ratified September 16, 1912. Proclamations of the President extending certain privileges under the American Copyright Law were made on April 15, 1892 (German Empire), September 20, 1907 (Austria), April 9, 1910 (German Empire and Austria), and December 8, 1910 (German Empire).

At the outset, the question arises whether conventions entered into between a number of states, some of which are at war with each other, are terminated or suspended by the war. The generally accepted view is that such conventions are suspended in their operation as to the countries at war with each other. In accordance with this view, Great Britain adopted the Trading with the Enemy (Copyright) Act of August 10, 1916, (reprinted in Appendix). See also 60 Sol. Jour. 780. That these international conventions are suspended as regards enemy subjects has also been held by the courts during the present war. Thus, the Japanese Imperial Supreme Court, in a decision of June 2, 1915, held that the priorities accorded by the conventions relating to industrial property are suspended during the war, because these conventions assume the existence of peaceable relations, and further that the Japanese Government, while giving to enemy subjects a protection and treatment in accordance with the dictates of justice and humanity, cannot go farther and accord them a friendly preference over the subjects of states not parties to the convention.

The German Imperial Supreme Court in a decision of October 26, 1914 (85 Supreme Court Decisions, 374), distinguishes between the continued force of the conventions from the standpoint of international law, and their continued operation as a part of the municipal law, and concludes that, while possibly the conventions are not in force from an international law point of view, they continue to be in force as a part of municipal law until superseded by legislation. This view is, however, rejected by most authorities, and the generally accepted view is that as war operates to suspend these conventions internationally, they also cease to be a part of the municipal law. See Osterrieth, in 19 Deutsche Juristen-Zeitung, 1072; Seligsohn, in 21 Ibid. 61. Furthermore, the actual point decided in the case above mentioned was that where an application had been duly filed prior to the war, and within the period of priority fixed by the convention, an action in nullity cannot be brought. In other words, the war did not divest the applicant of rights validly acquired under treaties and laws then in force. This is undoubted law. Thus, Marshall, C. J., in Chirac *v.* Chirac (1817), 2 Wheat. 259, 4 L. ed. 234: "A right once visited does not require, for its preservation the continued existence of the power by which it was acquired. If a treaty, or any other law has performed its office by giving a right the expiration of the treaty or law cannot extinguish that right." Accord: Society for the Propagation of the Gospel *v.* New Haven (1823), 8 Wheat. 464, 5 L. ed. 662; Carneal *v.* Banks (1825), 10 Wheat. 181, 10 L. ed. 297.

Treaties relating to industrial and intellectual property, between two countries which become engaged in war with each other, such as the treaty between the United States and the German Empire, of February 23, 1909, and between the United States and Hungary, of January 30, 1912, are terminated by the war. Thus, in the Treaty of Frankfort, of May 10, 1871, it was deemed necessary specifically to revive the provisions of a treaty relating to copyright in force prior to the Franco-Prussian War. So, also, after the Spanish-American War, the Agreement of July 6/15, 1895, which granted reciprocal privileges of copyright, and which led to the President's Proclamation of July 10, 1895, was revived by an interchange of notes between the two Governments in 1902. It is to be noted, however, that on the advice of the Attorney-General registration of copyright in favor of Spanish subjects was resumed by the Librarian of Congress on April 11, 1899, the date of the exchange of ratifications of the treaty of peace.

The situation in the United States would therefore appear to be as follows: As regards the German Empire, the declaration of a state of war with that country terminated the Patent Convention of February 23, 1909, and the reciprocal arrangements as to copyright contained in the various proclamations of the President noted above. By virtue of the same declaration the international conventions relating to industrial property are, as to German subjects suspended during the war. Beginning October 6, 1917, the rights of these persons, in so far as they are "enemies" are governed exclusively by the Act.

As to Austria-Hungary, the legal position remained unaltered until the passage of the Act. Except in so far as the Act, as a law of subsequent date, modifies any rules contained in the international conventions relating to industrial property to which both the United States and Austria-Hungary are parties, these conventions, and also the special copyright convention with Hungary and the Trade-Marks Convention with Austria-Hungary remained in force. By the declaration of the state of war between the United States and Austria-Hungary on December 7, 1917, the international conventions were suspended, and the Copyright Convention with Hungary, the Trade-Marks Convention, as well as any proclamations of the President under the Copyright Law were terminated.

Turkey is not a party to any of the international conventions above mentioned. The rights of Bulgarian and Turkish subjects, in so far as they are "allies of enemy" are governed solely by the Act.

It is to be specially noted that the international conventions regarding industrial property make nationality the primary test, and assimilate to the subjects or citizens of the contracting states, the subjects or citizens of states not parties to the Union, who are domiciled or have industrial or commercial establishments within a contracting state. Consequently, a Russian or a Turkish subject in Austria retained the rights accorded him under the international conventions until December 7, 1917, Russia and Turkey not being parties to the conventions, while an Englishman there domiciled retained these rights even after that date by virtue of his nationality, Great Britain being a party to the conventions, although such Englishman is an enemy under the Act. Conversely, an Austrian subject domiciled in England loses his rights of priority under the conventions as of December 7, 1917, but he is not an enemy under the Act.

The rights of persons who come within the definition of "enemy" or "ally of enemy" are governed by the Act.

As to powers of attorney, given by enemies or allies of enemy, see subsection (h), *infra.*

During the present war, all of the principal belligerents have passed laws permitting alien enemies to file such applications and to do all acts that may be necessary or proper in order to give effect to this right.

The right of an enemy or ally of enemy to apply for letters patent, etc., is not based upon the principle of reciprocity; the proviso at the end of section 10 (a) relates only to the right to apply after the war. An enemy or ally of enemy may, therefore, file and prosecute applications, even though under the laws of the state of which he is a subject, citizens of the United States are not accorded a similar privilege. Such privileges are, however, in fact accorded to citizens or subjects of countries at war with the German Empire or Austria-Hungary under the laws of these countries.

" And prosecute."

This includes answering objections.

" Who is unable."

The inability may arise by reason of a provision of law prohibiting intercourse or a prohibition against the sending of money to an enemy state or the suspension of postal service. It does not apply to any inability of a purely personal character (e. g., financial), although such inability may be due to "conditions arising out of war."

" May be granted an extension of nine months beyond the expiration of said period."

The word "may" is used in the sense of the word "shall," subject to the proviso. The words "said period" were obviously intended to apply to the date of six months after the war, and not to the words "the period prescribed by law."

" Provided the nation, etc."

The granting of the extension of nine months in this sentence in subsection (a) is conditioned upon circumstance that the nation of which the applicant is a citizen extends substantially similar privileges to citizens of the United States. As already indicated, the proviso does not apply to applications made by an enemy or an ally of enemy during the war.

United States citizen may apply in enemy country.

(b) Any citizen of the United States, or any corporation organized within the United States, may, when duly authorized by the President, pay to an enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents and trade-marks, prints, labels, and copyrights; and any such citizen or corporation may file and prosecute an application for letters patent or for registration of trade-mark, print, label, or copyright in the country of an enemy, or of an ally of enemy after first submitting such application to the President and receiving license so to file and prosecute, and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the President.

See notes to preceding subsection. The executive administration of this subsection is vested in the Federal Trade Commission. Executive Order, October 12, 1917, section 17.

The regulations provide as follows:

Applicants for licenses must submit, in the English language (or under exceptional circumstances in German), to the Federal Trade Commission every application for letters patent, for the registration of trade-mark, print, label, or copyright which they desire to file in the country of an enemy or ally of enemy, every amendment, power of attorney, letter, or communication with respect thereto, and every drawing, electro, or other cut or reproduction, specimen, facsimile, copy, or model, together with any check, draft, or other form of remittance for any tax, annuity, or fee, and agents' or attorneys' fees or compensation proposed to be sent, directly or indirectly, to any country of an enemy or ally of an enemy. In the case of chemical compounds or compositions of matter there shall also be submitted samples of the article or preparation, or samples of the ingredients, if any; and in the case of coloring matters prepared from tar, a sample of the dyeing of wool, silk, or cotton, and any statement, description, and directions in respect thereto, if and as required by the foreign law, and any and all other samples, specimens, descriptions, statements, and directions proposed to be forwarded.

There shall also be submitted at the same time, the envelope or other cover, stamped with sufficient postage and addressed, in which the matters herein mentioned are proposed to be forwarded.

The intention is to have submitted to the Federal Trade Commission every inclosure and cover concerning every application for patent, trade-mark, print, label, or copyright, and their prosecution, desired to be forwarded, directly or indirectly, to an enemy country or to the country of an ally of an enemy.

Everything (except remittance) is required to be furnished to the Federal Trade Commission in duplicate. One copy will be retained in the files of the Commission.

Each application for a license shall be accompanied by the affidavit of the applicant, his solicitor, or patent agent that nothing contained in any of the material submitted will give any information detrimental to the public safety or defense or which may assist the enemy or endanger the successful prosecution of the war, and that the amount of money, if any, proposed to be transmitted is the correct tax, annuity, or fee and the customary agents' fee, and such affidavit shall also state what portion of the remittance is to be applied to taxes, fees, or annuities and what portion to agents' fees.

Citizen may obtain license to use enemy-owned patent, etc.

(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding $100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

The executive administration of this subsection is vested in the Federal Trade Commission. Executive Order, October 12, 1917, section 18.

Applicants for a license under patents or copyrights owned or controlled by an enemy or an ally of an enemy are required to file a verified statement with the Federal Trade Commission in concise and nontechnical language, covering the following points, stating in each instance the facts upon which any conclusion may be based:

(*a*) If an individual, that he is a citizen of the United States. If a corporation, that it is organized within the United States.

(*b*) That the patent or copyright desired to be licensed is owned or controlled by an enemy or an ally of an enemy.

If it is claimed that the patent or copyright is controlled by an enemy or ally of an enemy, the nature and origin of the control should be plainly stated, whether by contract, agency, stock ownership, or otherwise.

(*c*) There shall be attached to the application a Patent Office copy of the patent and a certified abstract of title to it, or a specimen of the copyrighted article and a certified copy of the copyright entries and, in the case of a patent, of a certified copy of the petition and all powers of attorney in the file of the application.

(*d*) That licensing the applicant is for the public welfare. Specifically, that there is a demand for the patented or copyrighted article or the product of the patented process which is not being met.

(*e*) That the applicant is able to make or cause to be made the patented or copyrighted article or exercise the patented process. Specifically, that the applicant is technically and otherwise equipped to undertake or procure the manufacture or operate the process and is in fact able to do so.

(*f*) That the applicant intends to do so in good faith.

(*g*) The application must be verified by the person applying for the license, and in the case of a corporation by an officer thereof acquainted with the facts recited.

Each application shall be accompanied with a remittance of one hundred dollars. A separate application is required for each patent or copyright.

The application should be prepared in duplicate and, for convenience in filing, on good unglazed paper 8 inches by 10½ inches, directed to the Federal Trade Commission, Patent, Trade-mark, and Copyright Division, and may be transmitted by mail or delivered personally. Personal attendance at the outset is not necessary. If any hearings are desired, notice of them will be given.

In every case where practicable notice of applications for license will be given to the attorney of the patentee or copyright proprietor whose name appears in the file of the application in the Patent Office or the office of the Register of Copyrights.

The burden of establishing affirmatively the facts upon which, under the terms of the Act, licenses may be granted is placed upon the applicant for license.

" Owned or controlled by an enemy."

The determining factor is the title or control. If the patent, design, etc., or copyright has been assigned to a non-enemy person, no license can be granted. But the fact that a license has been granted to a non-enemy person, or a mortgage given on the patent, etc., does not prevent the granting of a license under this subsection. British Association of Glass Bottle Manufacturers, Ltd. *v.* Forster & Co. (1917), 33 T. L. R. 314.

" That such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, etc."

There must be a public interest in the manufacture, use, or publication. But the determination of the President in this regard is not subject to review.

" Fixing of prices, etc."

The power of the President to fix prices is limited to articles and products necessary to the health of the armed forces of the United States, or to the successful prosecution of the war. In the exercise of this power by the Federal Trade Commission, the price of a certain hypnotic and nerve calmative was fixed, and a profit of fifteen per cent. allowed. In other cases, the right to fix prices was reserved by the Commission.

Statement of use and enjoyment of patent. Compensation for use.

(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe;

and the licensee shall pay at such times as may be required to the Alien Property Custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trademarks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said Alien Property Custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the Alien Property Custodian.

The executive administration of this subsection is vested in the Federal Trade Commission. Executive Order, October 12, 1917, section 19.

" Licensee shall pay, etc."

The amount so paid constitutes a fund, to be dealt with as provided in subsection (f) of this section. It is a trust fund for the licensee and for the owner, and constitutes a fund out of which the claims of the owner may be wholly or partly satisfied under judicial proceedings as provided in subsection (f). The fund is held for disposition in accordance with section 12, but is subject to disposition by decree of court, without further determination by Congress, such as is required in regard to other property held by the Alien Property Custodian.

Term of license.

(e) Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this Act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

Enemy owner may sue for accounting; return of deposit to licensee if no suit is instituted.

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however*, That whenever suit is brought, as above, notice shall be filed with the Alien Property Custodian within thirty days after date of entry of suit: *Provided further*, That the licensee may make any and all defences which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the Alien Property Custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the Alien Property Custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

See notes to subsections (c) and (d).

Enemy may enjoin infringement of patent, etc.

(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided,* That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the Alien Property Custodian, such notice shall be in writing and shall be served in the same manner as civil process of Federal courts.

" Enemy . . . may institute and prosecute suits . . . to enjoin infringement."

This provision removes the disability otherwise inhering in an alien enemy to bring suits. *Supra,* p. 191. As to suits of this character the position of the enemy plaintiff is the same as "if the United States was not at war." The decision in Stumpf *v.* A. Schreiber Brewing Co. (1917), 242 Fed. 80, is thereby rendered obsolete.

The right to bring suit carries with it the right to do all things necessary and proper to render this right effective, including, e. g., the employment of counsel. Contracts to act as counsel are therefore valid, and the acts done in these cases on behalf of the enemy client are not a violation of section 3 of the Act. Powers of attorney heretofore or hereafter granted in this behalf are valid. See succeeding subsection (h).

Suits for infringement must be brought within the period of six years provided for in the Patent Law, as amended by the Act of March 3, 1897, chapter 391, section 6 (29 St. L. 694). And this for the twofold reason that this provision is not a statute of limitation, but a qualification on the right of property [Peters *v.* Hanger (1904), 134 Fed. 586), and that the enemy plaintiff is not under a legal disability to sue.

Powers of attorney valid.

(h) All powers of attorney heretofore or hereafter granted by an enemy or ally of enemy to any person within the United States, in so far as they may be requisite to the performance of acts authorized in subsections (a) and (g) of this section shall be valid.

As to the effect of war on powers of attorney, generally, see *supra*, p. 269.

Patents on inventions of detrimental consequence may be withheld. Suit for compensation in Court of Claims.

(i) Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner of Patents that, in violation of said order, said invention has been published or that an application for a patent therefor has been filed in any other country, by the inventor or his assigns or legal representatives, without the consent or approval of the Commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the President above referred to shall tender his invention to the Government of the United States for its use, he shall, if he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government.

May prohibit imports.

Sec. 11. Whenever during the present war the President shall find that the public safety so requires and shall make proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: *Provided, however,* That no preference shall be given to the ports of one State over those of another.

The first proclamation hereunder was made on November 28, 1917.

Investment of funds in Government bonds. Banks may act as depositaries; also Secretary of Treasury.

Sec. 12. That all moneys (including checks and drafts payable on demand) paid to or received by the Alien Property Custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such securities shall be sold and the proceeds deposited in the Treasury.

All other property of an enemy, or ally of enemy, conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depositary, or depositaries, of property of an enemy or ally of enemy any bank, or banks, or trust company, or trust companies, or other suitable depositary or depositaries, located and doing business in the United States. The Alien Property Custodian may deposit with such designated depositary or depositaries, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities, or property (except money or checks or drafts payable on demand which are required to be deposited with the Secretary of the Treasury) and such depositary or depositaries shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such Custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depositary or by the Alien Property Custodian into the Treasury of the United States as hereinbefore provided.

The President shall require all such designated depositaries to execute and file bonds sufficient in his judgment to protect property on deposit, such bonds to be conditioned as he may direct.

Powers of Alien Property Custodian. Delivery to United States Treasurer.

The Alien Property Custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property, and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificate upon its, his, or their books into the name of the Alien Property Custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The Alien Property Custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.

Any money or property required or authorized by the provisions of this Act to be paid, conveyed, transferred, assigned, or delivered to the Alien Property Custodian shall, if said Custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the Alien Property Custodian.

" Alien Property Custodian shall be vested, etc."

The Alien Property Custodian, subject to the Act, is a common-law trustee, and has the powers and is under the duties of such trustee.

" It shall be the duty, etc."

Upon demand, accompanied by the presentation of the certificates representing the enemy shares or beneficial interests in a corporation, such shares must be transferred into the name of the Alien Property Custodian, and the Custodian may thereafter take any steps which he is entitled to take in his character as shareholder. In re Pharaon et Fils (1915), 32 T. L. R. 47.

Under the English Acts and under the enactments of a number of the British Overseas Possessions, provision is made for the liquidation of certain businesses belonging to or controlled by enemies. For the various provisions, see Appendix. Interpreting these provisions a number of decisions have been rendered. See In re Fried Krupp Aktien-Gesellschaft [1916] 2 Ch. 194; In re W. Hagelberg A. G. [1916] 2 Ch. 503; In re Kastner & Co., Ltd. [1917] 1 Ch. 390; In re Goldschmidt, Ltd. [1917] 2 Ch. 194; In re Meyers Sohn, Ltd. [1917] 2 Ch. 201, affirmed (1917), 62 Sol. Jour. 120; In re Cedes Electric Traction, Ltd. (1917), 62 Sol. Jour. 70. Holt *v.* A. E. G. Electric Co. (1917), Times, Dec. 11, 1917. See also In re Aramayo Francke Mines, Ltd. [1917] 1 Ch. 451.

Distribution of alien property held by Custodian.

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the Alien Property Custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: *Provided, however,* That on order of the President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said Custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further,* That the Treasurer of the United States, on order of the Alien Property Custodian, shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee.

"After the end of the war, etc."

Subject to the provisions of sections 9 and 10, the property is held and administered by the Alien Property Custodian as a trustee. The property, including its accumulations, is to be disposed of so far as the claims of enemy or ally of enemy persons are concerned "as Congress shall direct."

Ship masters' certificates as to cargo and consignee.

SEC. 13. That, during the present war, in addition to the facts required by sections forty-one hundred and ninety-seven, forty-one hundred and ninety-eight, and forty-two hundred of the Revised Statutes, as amended by the Act of June fifteenth, nineteen hundred and seventeen, to be set out in the master's and shipper's manifests before clearance will be issued to vessels bound to foreign ports, the master or person in charge of any vessel, before departure of such vessel from port, shall deliver to the collector of customs of the district wherein such vessel is located a statement duly verified by oath that the cargo is not shipped or to be delivered in violation of this Act, and the owners, shippers, or consignors of the cargo of such vessels shall in like manner deliver to the collector like statement under oath as to the cargo or the parts thereof laden or shipped by them, respectively, which statement shall contain also the names and addresses of the actual consignees of the cargo, or if the shipment is made to a bank or other broker, factor, or agent, the names and addresses of the persons who are the actual consignees on whose account the shipment is made. The master or person in control of the vessel shall, on reaching port of destination of any of the cargo, deliver a copy of the manifest and of the said master's, owner's, shipper's, or consignor's statement to the American consular officer of the district in which the cargo is unladen.

Collector may refuse clearance for false representation.

SEC. 14. That, during the present war, whenever there is reasonable cause to believe that the manifest or the additional statements under oath required by the preceding section are false or that any vessel, domestic or foreign, is about to carry out of the United States any property to or for the account or benefit of an enemy, or ally of enemy, or any property or person whose export, taking out, or transport will be in violation of law, the collector of customs for the district in which such vessel is located is hereby authorized and empowered, subject to review by the President, to refuse clearance to any such vessel, domestic or foreign, for which clearance is required by law, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, to forbid the departure of such vessel from the port, and it shall thereupon be unlawful for such vessel to depart.

The collector of customs shall, during the present war, in each case report to the President the amount of gold or silver coin or bullion or other moneys of the United States contained in any cargo intended for export. Such report shall include the names and addresses of the consignors and consignees, together with any facts known to the collector with reference to such shipment and particularly those which may indicate that such gold or silver coin or bullion or moneys of the United States may be intended for delivery or may be delivered, directly or indirectly, to an enemy or an ally of enemy.

As to control of export of bullion, etc., see section 5 (b).

This is similar to the provision in the Act of Congress of May 20, 1862 (12 St. L. 404). See comment on provisions of this character, by James Brown Scott in 10 Am. Jour. Int. Law, 832–843.

Appropriation.

Sec. 15. That the sum of $450,000 is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to be used in the discretion of the President for the purpose of carrying out the provisions of this Act during the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for the payment of salaries of all persons employed under this Act, together with the necessary expenses for transportation, subsistence, rental of quarters in the District of Columbia, books of reference, periodicals, stationery, typewriters and exchanges thereof, miscellaneous supplies, printing to be done at the Government Printing Office, and all other necessary expenses not included in the foregoing.

Penalty for violation.

SEC. 16. That whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act, shall, upon conviction, be fined not more than $10,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

" Whoever."

This includes any individual, partnership or corporation.

" Willfully."

The jurisdiction of a prize court in proceedings for condemnation for trading with the enemy, is not ousted by establishing that there was an offense against the Trading with the Enemy Act. Cargo ex Moldavia (1916), 33 W. N. (New South Wales) 109. In prize proceedings the good faith of the claimant is immaterial. "It is clear that the rule must be enforced and confiscation decreed, whether the person engaging in the prohibited intercourse acts innocently and in good faith, and in pursuance of advice honestly believed to be sound, or of licenses or permissions honestly believed to be valid. The authorities for this are numerous. The fact of actual intercourse is the determining factor. Innocence of intention is no answer. If there has been an infraction of the rule, however innocent, the court must apply the consequences of decreeing confiscation." The Panariellos (1915), 1 Lloyd's P. C. 364; affirmed 2 Trehern, P. C. 47.

" Property concerned in such violation."

"It has been the established rule of the High Court of Admiralty in England, that a trading with the enemy, except by a royal license, subjects the property to confiscation. The decisions of that court show that the rule has been rigidly enforced, as, for instance, where the government had authorized a homeward trade from the enemy's possession, but had not specifically protected an outward trade to the same; and again, in instances where cargoes have been laden before the war, but where the parties had not used all possible diligence to countermand the voyage after the first notice of hostilities; and this rule has been enforced, not only against subjects of the Crown, but likewise against those of its allies in the war, upon the assumption that the rule was founded on the universal principle which states allies in war had a right to apply to each other's subjects. Vide Wheaton on Captures, p. 212; and 1 C. Robinson's Adm. R. 196, The Hoop. The same rule has been adopted with equal strictness by this court. . . . The same course of decision which has established that property of a subject or citizen taken trading with the enemy is forfeited, has decided also that it is forfeited as prize. The ground of the forfeiture is, that it is taken adhering to the enemy, and therefore the proprietor is *pro hac vice* to be considered as an enemy. Vide also Wheaton on Captures, p. 219, and 1 C. Robinson, 219, the case of The Nelly. Attempts have been made to evade the rule of public law, by the interposition of a neutral port between the shipment from the belligerent port and their ultimate destination in the enemy's country; but in all such cases the goods have been condemned, as having been taken in a course of commerce rendering them liable to confiscation; and it has been ruled that, without license from government, no communication, direct or indirect, can be carried on with the enemy; that the interposition of a prior port makes no difference; that all trade with the enemy is illegal, and the circumstance that the goods are to go first to a neutral port will not make it lawful. 3 C. Robinson, 22, The Indian Chief; and 4 C.

Robinson, 79, The Jonge Pieter." Per Daniel, J., in Jecker et al. *v.* Montgomery (1855), 18 How. 110, 15 L. ed. 311.

The property must be directly connected with the act of illegal trading. The property is taken as part of the punishment of the owner for participation in the illegal act.

There must be a seizure of the property in order to give the court jurisdiction for condemnation. Miller *v.* United States (1870), 11 Wall. 268, 20 L. ed. 135; Pelham *v.* Way (1872), 15 Wall. 196, 21 L. ed. 55; Brown *v.* Kennedy (1872), 15 Wall. 591, 21 L. ed. 193; The Confiscation Cases (1873), 20 Wall. 92, 22 L. ed. 320; Pike *v.* Wassell (1876), 94 U. S. 711, 24 L. ed. 307. After adjudication there is no interest left to convey. Wallach *v.* Van Riswick (1875), 92 U. S. 202, 23 L. ed. 473.

Purchases by neutral, *bona fide* and for value are not protected. The Ouachita Cotton (1867), 6 Wall. 521, 18 L. ed. 935.

The confiscation extends only to the property existing in the owner at the time. Burbank *v.* Conrad (1877), 96 U. S. 291, 24 L. ed. 731. It is therefore subject to all mortgages or liens which may have attached to the property prior to the offense. Day *v.* Micou (1873), 18 Wall. 156, 21 L. ed. 860; Waples *v.* Hay (1882), 108 U. S. 6, 27 L. ed. 632; Avegno *v.* Schmidt (1884), 113 U. S. 293, 28 L. ed. 976; Shields *v.* Shiff (1888), 124 U. S. 351, 31 L. ed. 445; Risley *v.* Phenix Bank (1881), 83 N. Y. 318, 38 Am. Rep. 421. But not as to rights acquired in the property after the commission of the offense. Union Insurance Company *v.* United States (1867), 6 Wall. 759, 18 L. ed. 879. Where, however, proceedings are brought in prize and not under a trading with the enemy act, and a vessel or cargo are condemned, the rights of lien holders on the vessel are not recognized. A capture as a prize of war, *jure belli*, overrides all previous liens. The Marie Glaeser [1914] P. 218; The Frances (1814), 8 Cr. 418, 3 L. ed. 609; The Hampton (1866), 5 Wall. 372, 18 L. ed. 659. Nor the claims of persons who have advanced moneys on cargo. The Odessa (1915), 1 Trehern P. C. 564. Nor claims for freight. The Juno (1914), 31 T. L. R. 131.

Forfeitures can be enforced even after cessation of hostilities. The Reform (1865), 3 Wall. 617, 18 L. ed. 105; Duvall *v.* United States (1866), 154 U. S. 548, 18 L. ed. 252.

United States district courts.

SEC. 17. That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary."

Philippines and Canal Zone.

SEC. 18. That the several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under this Act committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses under this Act committed upon the high seas and of conspiracies to commit such offenses as defined by section thirty-seven of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, and the provisions of said section for the purpose of this Act are hereby extended to the Philippine Islands and to the Canal Zone.

Publications in foreign language.

SEC. 19. Ten days after the approval of this Act and until the end of the war it shall be unlawful for any person, firm, corporation, or association, to print, publish, or circulate, or cause to be printed, published, or circulated in any foreign language, any news item, editorial, or other printed matter, respecting the government of the United States, or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war, or any matter relating thereto; *Provided*, that this section shall not apply to any print, newspaper, or publication where the publisher or distributor thereof, on or before offering the same for mailing, or in any manner distributing it to the public, has filed with the postmaster at the place of publication, in the form of an affidavit, a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper, or publication, and has caused to be printed, in plain type in the English language, at the head of each such item, editorial, or other matter, on each copy of such print, newspaper, or publication, the words "True translation filed with the postmaster at , on (naming the postoffice where the translation was filed, and the date of filing thereof), as required by the Act of (here giving the date of this Act)."

Any print, newspaper, or publication in any foreign language which does not conform to the provisions of this section is hereby declared to be non-mailable, and it shall be unlawful for any person, firm, corporation, or association, to transport, carry, or otherwise publish or distribute the same, or to transport, carry, or otherwise publish or distribute any matter which is made non-mailable by the provisions of the Act relating to espionage, approved June 15, 1917: *Provided further*, that upon evidence satisfactory to him that any print, newspaper, or publication, printed in a foreign language may be printed, published, and distributed free from the foregoing restrictions and conditions without detriment to the United States in the conduct of the present war, the President may cause to be issued to the printers or publishers of such print, newspaper, or publication, a permit to print, publish and circulate the issue or issues of their print, newspaper, or publication, free from such restrictions and requirements, such permits to be subject to revocation at his discretion. And the Postmaster General shall cause copies of all such permits and revocations of permits to be furnished to the postmaster of the postoffice serving the place from which the print, newspaper, or publication, granted the permit is to emanate. All matter printed, published and distributed under permits shall bear at the head thereof in plain type in the English language, the words, "Published and distributed under permit authorized by the Act of (here giving date of this Act), on file at the postoffice of , (giving name of office)."

Penalty.

Any person who shall make an affidavit containing any false statement in connection with the translation provided for in this section shall be guilty of the crime of perjury and subject to the punishment provided therefor by Section 125 of the Act of March 4, 1909, entitled "An Act to codify, revise, and amend the penal laws of the United States," and any person, firm, corporation, or association, violating any other requirement of this section shall, on conviction thereof, be punished by a fine of not more than five hundred dollars ($500), or by imprisonment of not more than one year, or, in the discretion of the Court, may be both fined and imprisoned.

" Ten days after the approval of this Act."

The Act was approved October 6, 1917. The executive administration of this section (except the penal provisions) is vested in the Postmaster-General. Executive Order, October 12, 1917, section 22.

" Unlawful . . . to print, publish or circulate . . . in any foreign language."

While primarily directed against the printing and publishing of the forbidden matter within the United States, the words of the Act cover the circulation of such matter even though printed and published in a foreign country; e. g., the circulation of books or newspapers published in a language other than English and relating to the matters prohibited, involves a violation of the Act.

" Any news item, editorial or other printed matter."

This includes not alone newspapers but any book or circulars and regardless of the manner in which the same are manifolded.

"Respecting the government of the United States . . . or any matter relating thereto."

While the Act was designed to prohibit the publication and circulation of matter involving a criticism of the government of the United States or of the department or officials thereof or the governments of and officials of countries at war with the Central Powers, the language employed covers all comment whether favorable or unfavorable in regard to any government engaged in the present war. It is limited, however, to comments regarding the policies, foreign or domestic, the international relations, and the state or conduct of the war or military operations.

The language of the Act is broad enough to cover statements in regard to prohibited matter even though in reference to governmental policies, etc., at any time prior to the present war.

"Provided, etc."

The section indicates the manner in which translations of prohibited matter are to be filed and in what manner a general permit may be granted. From the language of the proviso, an intent to limit the application of the provision to publications printed and published within the United States, is apparent. False statements contained in any affidavit of translation are punishable as perjury under the United States Penal Code, section 125, with the penalty indicated in the Act. A violation of section 19 itself is punishable as provided for under that section.

APPENDIX

A. United States

EXECUTIVE ORDER VESTING POWER AND AUTHORITY IN DESIGNATED OFFICERS AND MAKING RULES AND REGULATIONS UNDER TRADING WITH THE ENEMY ACT AND TITLE VII OF THE ACT APPROVED JUNE 15, 1917. (OCTOBER 12, 1917)

By virtue of the authority vested in me by "An Act to define, regulate, and punish Trading with the Enemy and for other Purposes," approved October 6, 1917, and by Title VII of the Act approved June 15, 1917, entitled "An Act to punish Acts of Interference with the Foreign Relations, the Neutrality and the Foreign Commerce of the United States, to punish Espionage and better to enforce the Criminal Laws of the United States and for other Purposes" (hereinafter designated as the Espionage Act), I hereby make the following orders and rules and regulations:

WAR TRADE BOARD

I. I hereby establish a War Trade Board to be composed of representatives, respectively, of the Secretary of State, of the Secretary of the Treasury, of the Secretary of Agriculture, of the Secretary of Commerce, of the Food Administrator, and of the United States Shipping Board.

II. I hereby vest in said Board the power and authority to issue licenses under such terms and conditions as are not inconsistent with law, or to withhold or refuse licenses, for the exportation of all articles, except coin, bullion or currency, the exportation or taking of which out of the United States may be restricted by proclamations heretofore or hereafter issued by me under said Title VII of the Espionage Act.

III. I further hereby vest in said War Trade Board the power and authority to issue, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse, licenses for the importation of all articles the importation of which may be restricted by any proclamation hereafter issued by me under section 11 of the Trading with the Enemy Act.

IV. I further hereby vest in said War Trade Board the power and authority not vested in other officers by subsequent provisions of this order, to issue, under such terms and conditions as are not inconsistent with law, or to withhold or refuse, licenses to trade either directly or indirectly with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade directly or indirectly for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

V. I further hereby vest in said War Trade Board the power and authority, under such terms and conditions as are not inconsistent with law, to issue to every enemy or ally of enemy, other than enemy or ally of enemy insurance or reinsurance companies, doing business within the United States through an agency or branch office, or otherwise, applying therefor within 30 days of October 6, 1917, licenses temporary or otherwise to continue to do business, or said Board may withhold or refuse the same.

VI. And I further hereby vest in said War Trade Board the executive administration of the provisions of section 4 (b) of the Trading with the Enemy Act relative to granting licenses to enemies and enemy allies to assume or use other names than those by which they were known at the beginning of the war. And I hereby authorize said Board to issue licenses not inconsistent with the provisions of law or to withhold or refuse licenses to any enemy, or ally of enemy, or partnership of which an enemy or ally of enemy is a member or was a member at the beginning of the war, to assume or use any name other than that by which such enemy or ally of enemy or partnership was ordinarily known at the beginning of the war.

VII. I hereby revoke the Executive Order of August 21, 1917, creating the Exports Administrative Board. All proclamations, rules, regulations, and instructions made or given by me under Title VII of the Espionage Act and now being administered by the Exports Administrative Board are hereby continued, confirmed, and made applicable to the War Trade Board, and all employees of the Exports Administrative Board are hereby transferred to and constituted employees of the War Trade Board in the same capacities, and said War Trade Board is hereby authorized to exercise without interruption the powers heretofore exercised by said Exports Administrative Board.

VIII. The said War Trade Board is hereby authorized and empowered to take all such measures as may be necessary or expedient to administer the powers hereby conferred. And I hereby vest in the War Trade Board the power conferred upon the President by section 5 (a) to make such rules and regulations, not inconsistent with law, as may be necessary and proper for the exercise of the powers conferred upon said Board.

WAR TRADE COUNCIL

IX. I hereby establish a War Trade Council to be composed of the Secretary of State, Secretary of the Treasury, Secretary of Agriculture, Secretary of Commerce, the Food Administrator, and the chairman of the Shipping Board, and I hereby authorize and direct the said War Trade Council thus constituted to act in an advisory capacity in such matters under said acts as may be referred to them by the President or the War Trade Board.

SECRETARY OF THE TREASURY

X. I hereby vest in the Secretary of the Treasury the executive administration of any investigation, regulation, or prohibition of any transaction in foreign exchange, export or earmarking of gold or silver coin, or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States) and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, or between residents of one or more foreign countries, by any person within the United States; and I hereby vest in the Secretary of the Treasury the authority and power to require any person engaged in any such transaction to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters or other papers in connection therewith in the custody or control of such person, either before or after such transaction is completed.

XI. I further hereby vest in the Secretary of the Treasury the executive administration of the provisions of subsection (c) of section 3 of the Trading with the Enemy Act relative to sending, or taking out of, or bringing into, or attempting to send, take out of, or bring into, the United States, any letter, writing or tangible form of communication, except in the regular course of the mail; and of the sending, taking, or transmitting, or attempting to send, take, or transmit, out of the United States, any letter, or other writing, book, map, plan or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy. And said Secretary of the Treasury is hereby authorized and empowered to issue licenses to send, take or transmit out of the United States anything otherwise forbidden by said subsection (c) and give such consent or grant such exemption in respect thereto, as is not inconsistent with law, or to withhold or refuse the same.

XII. I further authorize the Secretary of the Treasury to grant a license under such terms and conditions as are not inconsistent with law or to withhold or refuse the same to any "enemy" or "ally of enemy" insurance or reinsurance company doing business within the United States through an agency or branch office or otherwise, which shall make application within 30 days of October 6, 1917.

XIII. I hereby authorize and direct the Secretary of the Treasury, for the purpose of such executive administration, to take such measures, adopt such administrative procedure, and use such agency or agencies as he may from time to time deem necessary and proper for that purpose. The Proclamation of the President, dated September 7, 1917, made under authority vested in him by Title VII of said act of Congress, approved June 15, 1917, shall remain in full force and effect. The Executive Order, dated September 7, 1917, made under the authority of said title shall remain in full force and effect until new regulations shall have been established by the President, or by the Secretary of the Treasury, with the approval of the President, and thereupon shall be superseded.

CENSORSHIP BOARD

XIV. I hereby establish a Censorship Board to be composed of representatives, respectively, of the Secretary of War, the Secretary of the Navy, the Postmaster General, the War Trade Board, and the chairman of the Committee on Public Information.

XV. And I hereby vest in said Censorship Board the executive administration of the rules, regulations, and proclamations from time to time established by the President under subsection (d) of section 3, of the Trading with the Enemy Act, for the censorship of communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country from time to time specified by the President, or carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country.

XVI. The said Censorship Board is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

FEDERAL TRADE COMMISSION

XVII. I further hereby vest in the Federal Trade Commission the power and authority to issue licenses under such terms and conditions as are not inconsistent with law or to withhold or refuse the same, to any citizen of the United States or any corporation organized within the United States to file and prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label, or copyright, and to pay the fees required by law and the customary agents' fees, the maximum amount of which in each case shall be subject to the control of such Commission; or to pay to any enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents, trade-marks, prints, labels, and copyrights.

XVIII. I hereby vest in the Federal Trade Commission the power and authority to issue, pursuant to the provisions of section 10 (c) of the Trading with the Enemy Act, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse a license to any citizen of the United States, or any corporation organized within the United States, to manufacture or cause to be manufactured a machine, manufacture, composition of matter, or design, or to carry on or cause to be carried on a process under any patent, or to use any trade-mark, print, label, or copyrighted matter owned or controlled by an enemy or ally of enemy, at any time during the present war; and also to fix the prices of articles and products manufactured under such licenses necessary to the health of the military and the naval forces of the United States, or the successful prosecution of the war; and to prescribe the fee which may be charged for such license, not exceeding $100 and not exceeding 1 per cent of the fund deposited by the licensee with the Alien Property Custodian as provided by law.

XIX. I hereby further vest in the said Federal Trade Commission the executive administration of the provisions of section 10 (d) of the Trading with the Enemy Act, the power and authority to prescribe the form of, and time and manner of filing statements of the extent of the use and enjoyment of the license and of the prices received and the times at which the licensee shall make payments to the Alien Property custodian, and the amounts of said payments, in accordance with the Trading with the Enemy Act.

XX. I further hereby vest in the Federal Trade Commission the power and authority, whenever in its opinion the publication of an invention or the granting of a patent may be detrimental to the public safety or defense, or may assist the enemy, or endanger the successful prosecution of the war, to order that the invention be kept secret and the grant of letters patent withheld until the end of the war.

XXI. The said Federal Trade Commission is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

THE POSTMASTER-GENERAL

XXII. I hereby vest in the Postmaster-General the executive administration of all the provisions (except the penal provisions) of section 19, of the Trading with the Enemy Act, relating to the printing, publishing or circulation in any foreign language of any news item, editorial, or other printed matter respecting the Government of the United States or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war or any matter relating thereto, and the filing with the postmaster at the place of publication, in the form of an affidavit of a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper or publication, and the issuance of permits for the printing, publication and distribution thereof free from said restriction. And the Postmaster-General is authorized and empowered to issue such permits upon such terms and conditions as are not inconsistent with law and to refuse, withhold or revoke the same.

XXIII. The sum of $35,000 or so much thereof as may be necessary is hereby allotted out of the funds appropriated by the Trading with the Enemy Act, to be expended by the Postmaster-General in the administration of said section 19 thereof.

XXIV. The Postmaster-General is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

SECRETARY OF STATE

XXV. I hereby vest in the Secretary of State the executive administration of the provisions of subsection (b) of section 3 of the Trading with the Enemy Act relative to any person transporting or attempting to transport any subject or citizen of an enemy or ally of enemy nation, and relative to transporting or attempting to transport by any owner, master or other person in charge of a vessel of American registry, from any place to any other place, such subject or citizen of an enemy or enemy ally.

XXVI. And I hereby authorize and empower the Secretary of State to issue licenses for such transportation of enemies and enemy allies or to withhold or refuse the same.

XXVII. And said Secretary of State is hereby authorized and empowered to take all such measures as may be necessary or expedient to administer the powers hereby conferred and to grant, refuse, withhold or revoke licenses thereunder.

SECRETARY OF COMMERCE

XXVIII. I hereby vest in the Secretary of Commerce the power to review the refusal of any collector of customs under the provisions of sections 13 and 14 of the Trading with the Enemy Act, to clear any vessel, domestic or foreign, for which clearance is required by law.

ALIEN PROPERTY CUSTODIAN

XXIX. I hereby vest in an Alien Property Custodian, to be hereafter appointed, the executive administration of all the provisions of section 7 (a), section 7 (c), and section 7 (d) of the Trading with the Enemy Act, including all power and authority to require lists and reports, and to extend the time for filing the same, conferred upon the President by the provisions of said section 7 (a), and including the power and authority conferred upon the President by the provisions of said section 7 (c), to require the conveyance, transfer, assignment, delivery or payment to himself, at such time and in such manner as he shall prescribe, of any money or other properties owing to or belonging to or held for, by or on account of, or on behalf of, or for the benefit of any enemy or ally of an enemy, not holding a license granted under the provisions of the Trading with the Enemy Act, which, after investigation, said Alien Property Custodian shall determine is so owing, or so belongs, or is so held.

XXX. Any person who desires to make conveyance, transfer, payment, assignment or delivery, under the provisions of section 7 (d) of the Trading with the Enemy Act, to the Alien Property Custodian of any money or other property owing to or held for, by or on account of, or on behalf of, or for the benefit of an enemy or ally of enemy, not holding a license granted as provided in the Trading with the Enemy Act, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, shall file application with the Alien Property Custodian for consent and permit to so convey, transfer, assign, deliver or pay such money or other property to him, and said Alien Property Custodian is hereby authorized to exercise the power and authority conferred upon the President by the provisions of said section 7 (d) to consent and to issue permit upon such terms and conditions as are not inconsistent with law, or to withhold or refuse the same.

XXXI. I further vest in the Alien Property Custodian the executive administration of all the provisions of section 8 (a), section 8 (b), and section 9 of the Trading with the Enemy Act, so far as said sections relate to the powers and duties of said Alien Property Custodian.

XXXII. I vest in the Attorney-General all power and authority conferred upon the President by the provisions of section 9 of the Trading with the Enemy Act.

XXXIII. The Alien Property Custodian, to be hereafter appointed, is hereby authorized to take all such measures as may be necessary or expedient, and not inconsistent with law, to administer the powers hereby conferred; and he shall further have the power and authority to make such rules and regulations not inconsistent with law as may be necessary and proper to carry out the provisions of said section 7 (a), section 7 (c), section 7 (d), section 8 (a), and section 8 (b), conferred upon the President by the provisions thereof and by the provisions of section 5 (a), said rules and regulations to be duly approved by the Attorney-General.

XXXIV. The Alien Property Custodian, to be hereafter appointed, shall, "under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe," have administration of all moneys (including checks and drafts payable on demand) and of all property, other than money which shall come into his possession in pursuance of the provisions of the Trading with the Enemy Act, in accordance with the provisions of section 6, section 10, and section 12 thereof.

WOODROW WILSON.

THE WHITE HOUSE,
12 October, 1917.

B. BRITISH EMPIRE

I. United Kingdom

NOTE. The Royal Proclamation of August 5, 1914, was subsequently revoked. By Proclamations of November 5, 1914 (1914, No. 1628), and October 16, 1915 (1915, No. 1003), the trading with the enemy proclamations were extended to the war with Turkey and with Bulgaria. The principal proclamations and acts now in force are reprinted below. Under Proclamations of June 25, 1915 (1915, No. 609) and November 10, 1915 (1915, No. 1070), the term "enemy" as used in the various enactments was extended so as to include all persons or bodies of persons of enemy nationality resident or carrying on business in China, Siam, Persia, Morocco, Liberia and Portuguese East Africa. By Proclamation of

February 16, 1915 (1915, No. 140), the proclamations were extended so as to place territory in friendly occupation in the same position as domestic or allied territory, and territory in hostile occupation in the same position as enemy territory.

By Proclamation of January 7, 1915 (1915, No. 3), banking business with a branch situated outside of the United Kingdom of an enemy person, firm, or company, and any description of business with a branch situated outside the United Kingdom of an enemy bank, was declared to be within the prohibitions of the various enactments. By the Proclamation of October 8, 1914 (1914, No. 1479), the Proclamation of September 9, 1914, was extended and the prohibitions therein contained were extended to cover insurance or reinsurance transactions with branches of an enemy company locally situated in British, Allied, or neutral territory.

The Trading with the Enemy (Statutory List) Proclamation, 1916, No. 3 (1916, No. 320) of May 23, 1916, is the principal proclamation extending the meaning of the term "enemy" to persons or bodies of persons therein set forth. A revised and consolidated Statutory List is published from time to time.

TRADING WITH THE ENEMY PROCLAMATION, NO. 2, 1914. (SEPTEMBER 9, 1914)

[1914, No. 1376]

Whereas a state of War has existed between Us and the German Empire as from 11 p. m. on August 4th, 1914, and a state of War has existed between Us and the Dual Monarchy of Austria-Hungary as from midnight on August 12th, 1914:

And whereas it is contrary to law for any person resident, carrying on business, or being in Our Dominions, to trade or have any commercial or financial transactions with any person resident or carrying on business in the German Empire or Austria-Hungary without Our permission:

And whereas by Our Proclamation of the 5th August, 1914, relating to trading with the Enemy, certain classes of transactions with the German Empire were prohibited:

And whereas by paragraph 2 of Our Proclamation of the 12th August, 1914, the said Proclamation of the 5th August, 1914, was declared to be applicable to Austria-Hungary:

And whereas it is desirable to restate and extend the prohibitions contained in the former Proclamations, and for that purpose to revoke the Proclamation of the 5th August, 1914, and paragraph 2 of the Proclamation of the 12th August, 1914, and to substitute this Proclamation therefor:

And whereas it is expedient and necessary to warn all persons resident, carrying on business, or being in Our Dominions of their duties and obligations towards Us, Our Crown, and Government:

Now, therefore, We have thought fit, by and with the advice of Our Privy Council, to issue this Our Royal Proclamation declaring and it is hereby declared as follows:—

1. The aforesaid Proclamation of the 5th August, 1914, relating to trading with the Enemy, and paragraph 2 of the aforesaid Proclamation of the 12th August, 1914, together with any public announcement officially issued in explanation thereof, are hereby, as from the date hereof, revoked, and from and after the date hereof this present Proclamation is substituted therefor.

2. The expression "enemy country" in this Proclamation means the territories of the German Empire and of the Dual Monarchy of Austria-Hungary, together with all the colonies and dependencies thereof.

3. The expression "enemy" in this Proclamation means any person or body of persons of whatever nationality resident or carrying on business in the enemy country, but does not include persons of enemy nationality who are neither resident nor carrying on business in the enemy country. In the case of incorporated bodies, enemy character attaches only to those incorporated in an enemy country.

4. The expression "outbreak of war" in this Proclamation means 11 p. m. on the 4th August, 1914, in relation to the German Empire, its colonies and dependencies, and midnight on the 12th August, 1914, in relation to Austria-Hungary, its colonies and dependencies.

5. From and after the date of this Proclamation the following prohibitions shall have effect (save so far as licences may be issued as hereinafter provided), and We do hereby accordingly warn all persons resident, carrying on business, or being in Our Dominions—

(1) Not to pay any sum of money to or for the benefit of an enemy.

(2) Not to compromise or give security for the payment of any debt or other sum of money with or for the benefit of an enemy.

(3) Not to act on behalf of an enemy in drawing, accepting, paying, presenting for acceptance or payment, negotiating or otherwise dealing with any negotiable instrument.

(4) Not to accept, pay, or otherwise deal with any negotiable instrument which is held by or on behalf of an enemy, provided that this prohibition shall not be deemed to be infringed by any

person who has no reasonable ground for believing that the instrument is held by or on behalf of an enemy.

(5) Not to enter into any new transaction, or complete any transaction already entered into with an enemy in any stocks, shares, or other securities.

(6) (As amended by Proclamation of October 8, 1914, section 1.) Not to make or enter into any new marine, life, fire or other policy or contract of insurance (including re-insurance) with or for the benefit of an enemy; nor to accept or give effect to any insurance of, any risk arising under any policy or contract of insurance (including re-insurance) made or entered into with or for the benefit of an enemy before the outbreak of war; and in particular as regards Treaties or Contracts of re-insurance current at the outbreak of war to which an enemy is a party or in which an enemy is interested not to cede to the enemy or to accept from the enemy under any such Treaty or Contract any risk arising under any policy or contract of insurance (including re-insurance) made or entered into after the outbreak of war, or any share in any such risk.

(7) Not directly or indirectly to supply to or for the use or benefit of, or obtain from, an enemy country or an enemy, any goods, wares or merchandise, nor directly or indirectly to supply to or for the use or benefit of, or obtain from any person any goods, wares or merchandise, for or by way of transmission to or from an enemy country or an enemy, nor directly or indirectly to trade in or carry any goods, wares or merchandise destined for or coming from an enemy country or an enemy.

(8) Not to permit any British ship to leave for, enter or communicate with, any port or place in an enemy country.

(9) Not to enter into any commercial, financial, or other contract or obligation with or for the benefit of an enemy.

(10) Not to enter into any transactions with an enemy if and when they are prohibited by an Order of Council made and published on the recommendation of a Secretary of State, even though they would otherwise be permitted by law or by this or any other Proclamation.

And We do hereby further warn all persons that whoever in contravention of the law shall commit, aid or abet any of the aforesaid acts, is guilty of a crime, and will be liable to punishment and penalties accordingly.

6. Provided always that where an enemy has a branch locally situated

in British, allied or neutral territory, not being neutral territory in Europe, transactions by or with such branch shall not be treated as transactions by or with an enemy.

7. Nothing in this Proclamation shall be deemed to prohibit payments by or on account of enemies to persons resident, carrying on business or being in Our Dominions, if such payments arise out of transactions entered into before the outbreak of War or otherwise permitted.

8. Nothing in this Proclamation shall be taken to prohibit anything which shall be expressly permitted by Our License, or by the license given on Our behalf by a Secretary of State, or the Board of Trade, whether such licenses be especially granted to individuals or be announced as applying to classes of persons.

9. This Proclamation shall be called the Trading with the Enemy Proclamation No. 2.

PROCLAMATION RELATING TO TRADING WITH THE ENEMY. (SEPTEMBER 14, 1915)

[1915, No. 903]

Whereas doubts have arisen as respects the position, under the Proclamations for the time being in force relating to Trading with the Enemy, of incorporated companies or bodies of persons which, though not incorporated in any enemy country or in territory in hostile occupation, carry on business in any such country or territory:

And whereas it is expedient that the position of those companies or bodies for the purposes of those Proclamations should be defined:

Now, therefore, We have thought fit, by and with the advice of Our Privy Council, to issue this Our Royal Proclamation, declaring, and it is hereby declared, as follows:

For the purposes of the Proclamations for the time being in force relating to Trading with the Enemy, the expression "enemy," notwithstanding anything in the said "Proclamations," is hereby declared to include, and to have included, any incorporated company or body of persons (wherever incorporated) carrying on business in an enemy country or in any territory for the time being in hostile occupation.

TRADING WITH THE ENEMY ACT, 1914

4 & 5 Geo. 5, c. 87

AN ACT TO MAKE PROVISION WITH RESPECT TO PENALTIES FOR TRADING WITH THE ENEMY, AND OTHER PURPOSES CONNECTED THEREWITH. (SEPTEMBER 18, 1914)

1. (1) Any person who during the present war trades or has, since the 4th day of August, 1914, traded with the enemy within the meaning of this Act shall be guilty of a misdemeanor, and shall—

(a) On conviction under the Summary Jurisdiction Acts, be liable to imprisonment with or without hard labor for a term not exceeding 12 months, or to a fine not exceeding £500, or to both such imprisonment and fine; or

(b) On conviction on indictment, be liable to penal servitude for a term not exceeding seven or less than three years or to imprisonment with or without hard labor for a term not exceeding two years, or to a fine, or to both such penal servitude or imprisonment and fine.

And the court may in any case order that any goods or money, in respect of which the offense has been committed, be forfeited.

(2) For the purposes of this Act a person shall be deemed to have traded with the enemy if he has entered into any transaction or done any act which was, at the time of such transaction or act, prohibited by or under any proclamation issued by His Majesty dealing with trading with the enemy for the time being in force, or which at common law or by statute constitutes an offense of trading with the enemy: *Provided*, That any transaction or act permitted by or under any such proclamation shall not be deemed to be trading with the enemy.

(3) Where a company has entered into a transaction or has done any act which is an offense under this section, every director, manager, secretary, or other officer of the company who is knowingly a party to the transaction or act shall also be deemed guilty of the offense.

(4) A prosecution for an offense under this section shall not be instituted except by or with the consent of the Attorney-General: *Provided*, That the person charged with such an offense may be arrested and a warrant for his arrest may be issued and executed, and such person may be remanded in custody or on bail notwithstanding that the consent of the Attorney-General to the institution of the prosecution for the offense has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

(5) Where an act constitutes an offense both under this Act and under any other act, or both under this Act and at common law, the offender shall be liable to be prosecuted and punished under either this Act or such other act, or under this Act or at common law, but shall not be liable to be punished twice for the same offense.

2. (1) If a justice of the peace is satisfied, on information on oath laid on behalf of a Secretary of State or the Board of Trade, that there is reasonable ground for suspecting that an offense under this Act has been or is about to be committed by any person, firm, or company, he may issue a warrant authorizing any person appointed by a Secretary of State or the Board of Trade and named in the warrant to inspect all books or documents belonging to or under the control of that person, firm, or company, and to require any person able to give any information with respect to the business or trade of that person, firm, or company to give that information, and if accompanied by a constable to enter and search any premises used in connection with the business or trade, and to seize any such books or documents as aforesaid: *Provided*, That when it appears to a Secretary of State or the Board of Trade that the case is one of great emergency and that in the interests of the State immediate action is necessary, a Secretary of State or the Board of Trade may, by written order, give to a person appointed by him or them the like authority as may be given by a warrant of a justice under this subsection.

(2) Where it appears to the Board of Trade—

(a) In the case of a firm, that one of the partners in the firm was immediately before or at any time since the commencement of the present war a subject of, or resident or carrying on business in, a State for the time being at war with His Majesty; or

(b) In the case of a company that one-third or more of the issued share capital or of the directorate of the company immediately before or at any time since the commencement of the present war was held by or on behalf of or consisted of persons who were subjects of, or resident or carrying on business in, a State for the time being at war with His Majesty; or

(c) (As amended by 5 Geo. 5, c. 12, section 12.) In the case of a person, firm, or company, that the person was or is, or the firm or company were or are, acting as agent for any person, firm, or company resident or carrying on business in a State for the time being at war with His Majesty.

The Board of Trade may, if they think it expedient for the purpose of satisfying themselves that the person, firm, or company are not trading with the enemy, by written order, give to a person appointed by them, without any warrant from a justice, authority to inspect all books and documents belonging to or under the control of the person, firm, or company, and to require any person able to give information with respect to the business or trade of that person, firm, or company to give that information.

For the purposes of this subsection, any person authorized in that behalf by the Board of Trade may inspect the register of members of a company at any time, and any shares in a company for which share warrants to bearer have been issued shall not be reckoned as part of the issued share capital of the company.

(3) If any person having the custody of any book or document which a person is authorized to inspect under this section refuses or willfully neglects to produce it for inspection, or if any person who is able to give any information which may be required to be given under this section refuses or willfully neglects when required to give that information, that person shall on conviction under the Summary Jurisdiction Acts be liable to imprisonment with or without hard labor for a term not exceeding six months, or to a fine not exceeding £50, or to both such imprisonment and fine.

3. Where it appears to the Board of Trade in reference to any firm or company—

(a) That an offense under this Act has been or is likely to be commited in connection with the trade or business thereof; or

(b) That the control or management thereof has been or is likely to be so affected by the state of war as to prejudice the effective continuance of its trade or business, and that it is in the public interest that the trade or business should continue to be carried on;

The Board of Trade may apply to the High Court for the appointment of a controller of the firm or company, and the High Court shall have power to appoint such a controller, for such time and subject to such conditions, and with such powers as the court thinks fit, and the powers so conferred shall be either those of a receiver and manager or those powers subject to such modifications, restrictions, or extensions as the court thinks fit (including, if the court considers it necessary or expedient for enabling the controller to borrow money, power, after a special application to the court for that purpose, to create charges on the property of the firm or company in priority to existing charges).

The court shall have power to direct how and by whom the costs of any proceedings under this section, and the remuneration, charges, and expenses of the controller, shall be borne, and shall have power, if it thinks fit, to charge such costs, charges, and expenses on the property of the firm or company in such order of priority, in relation to any existing charges thereon, as it thinks fit.

4. (1) This Act may be cited as the Trading with the Enemy Act, 1914.

(2) In this Act the expression "Attorney-General" means the Attorney or Solicitor-General for England, and as respects Scotland means the Lord Advocate, and as respects Ireland means the Attorney or Solicitor-General for Ireland.

(3) In the application of this Act to Scotland the Secretary for Scotland shall be substituted for a Secretary of State, and the Court of Session shall be substituted for the High Court; the court exercising summary jurisdiction shall be the Sheriff Court; references to a justice of the peace shall include references to the sheriff and to a burgh magistrate; and references to a receiver and manager shall be construed as references to a judicial factor.

(4) In the application of this Act to Ireland the Lord Lieutenant shall be substituted for a Secretary of State.

(5) Anything authorized under this Act to be done by the Board of Trade may be done by the President or a Secretary or Assistant Secretary of the Board, or any person authorized in that behalf by the President of the Board.

TRADING WITH THE ENEMY AMENDMENT ACT, 1914

5 Geo. 5, c. 12

AN ACT TO AMEND THE TRADING WITH THE ENEMY ACT, 1914, AND FOR PURPOSES CONNECTED THEREWITH (NOVEMBER 27, 1914)

Whereas it is expedient to make further provision for preventing the payment of money to persons and bodies of persons resident or carrying on business in any country with which His Majesty is for the time being at war, which persons and bodies of persons are hereinafter referred to as "enemies," in contravention of the law relating to trading with the enemy, and for preserving, with a view to arrangements to be made at the conclusion of peace, such money and certain other property belonging to enemies; and to make other provisions for preventing trading with the enemy:

1. (1) The Board of Trade shall appoint a person to act as Custodian of Enemy Property (hereinafter referred to as "the Custodian") for

England and Wales, for Scotland, and for Ireland, respectively, for the purpose of receiving, holding, preserving, and dealing with such property as may be paid to or vested in him in pursuance of this Act, and if any question arises as to which custodian any money is to be paid to under this Act, the question shall be determined by the Board of Trade.

(2) The Public Trustee shall be appointed to be the Custodian for England and Wales, and shall, in relation to all property held by him in his capacity of Custodian, have the like status, and his accounts shall be subject to the like audit, as if the same were held by him in his capacity of Public Trustee, and the Public Trustee Act, 1906, shall apply accordingly.

(3) The Custodian for Scotland and Ireland, respectively, shall have such powers and duties with respect to the property aforesaid as may be prescribed by regulations made by the Board of Trade with the approval of the Treasury.

(4) The Custodian may place on deposit with any bank, or invest in any securities, approved by the Treasury, any moneys paid to him under this Act, or received by him from property vested in him under this Act, and any interest or dividends received on account of such deposits or investments shall be dealt with in such manner as the Treasury may direct: *Provided*, That the Custodian for any part of the United Kingdom shall, if so directed by the Treasury, transfer any money held by him under this Act to the Custodian of another part thereof.

2. (1) Any sum which, had a state of war not existed, would have been payable and paid to or for the benefit of an enemy, by way of dividends, interest, or share of profits, shall be paid by the person, firm, or company by whom it would have been payable, to the Custodian to hold subject to the provisions of this Act, and any Order in Council made thereunder, and the payment shall be accompanied by such particulars as the Board of Trade may prescribe, or as the Custodian, if so authorized by the Board of Trade, may require.

Any payment required to be made under this subsection to the Custodian shall be made—

(a) Within 14 days after the passing of this Act if the sum, had a state of war not existed, would have been paid before the passing of this Act; and

(b) In any other case within 14 days after it would have been paid.

(2) Where before the passing of this Act any such sum has been paid into any account with a bank, or has been paid to any other person in trust for an enemy, the person, firm, or company by whom the payment was made shall, within 14 days after the passing of this Act, by notice in writing, require the bank or person to pay the sum over to the Custodian

to hold as aforesaid, and shall furnish the Custodian with such particulars as aforesaid. The bank or other person shall, within one week after the receipt of the notice, comply with the requirement and shall be exempt from all liability for having done so.

(3) If any person fails to make or require the making of any payment or to furnish the prescribed particulars within the time mentioned in this section, he shall, on conviction under the Summary Jurisdiction Acts, be liable to a fine not exceeding £100 or to imprisonment, with or without hard labor, for a term not exceeding six months, or to both such fine and imprisonment, and in addition to a further fine not exceeding £50 for every day during which the default continues, and every director, manager, secretary, or officer of a company, or any other person who is knowingly a party to the default shall, on the like conviction, be liable to the like penalty.

(4) If in the case of any person, firm, or company whose books and documents are liable to inspection under subsection (2) of section 2 of the Trading with the Enemy Act, 1914 (hereinafter referred to as the "principal Act"), any question arises as to the amount which would have been so payable and paid as aforesaid, the question shall be determined by the person who may have been or who may be appointed to inspect the books and documents of the person, firm, or company, or, on appeal, by the Board of Trade, and if, in the course of determining the question, it appears to the inspector or the Board of Trade that the person, firm, or company has not distributed as dividends, interest, or profits the whole of the amount properly available for that purpose, the inspector or Board may ascertain what amount was so available, and require the whole of such amount to be so distributed, and, in the case of a company, if such dividends have not been declared, the inspector or the board may himself or themselves declare the appropriate dividends, and every such declaration shall be as effective as a declaration to the like effect duly made in accordance with the constitution of the company:

Provided that where a controller has been appointed under section 3 of the principal Act this subsection shall apply as if for references to the inspector there were substituted references to the controller.

(5) For the purposes of this Act the expression "dividends, interest, or share of profits" means any dividends, bonus, or interest in respect of any shares, stock, debentures, debenture stock, or other obligations of any company, any interest in respect of any loan to a firm or person carrying on business for the purposes of that business, and any profits or share of profits of such a business, and, where a person is carrying on any business on behalf of an enemy, any sum which, had a state

of war not existed, would have been transmissible by a person to the enemy by way of profits from that business shall be deemed to be a sum which would have been payable and paid to that enemy.

3. (1) Any person who holds or manages for or on behalf of an enemy any property, real or personal (including any rights, whether legal or equitable, in or arising out of property, real or personal), shall, within one month after the passing of this Act, or, if the property comes into his possession or under his control after the passing of this Act, then within one month after the time when it comes into his possession or under his control, by notice in writing, communicate the fact to the Custodian, and shall furnish the Custodian with such particulars in relation thereto as the Custodian may require; and if any person fails to do so he shall, on conviction under the Summary Jurisdiction Acts, be liable to a fine not exceeding £100 or to imprisonment, with or without hard labor, for a term not exceeding six months, or to both such a fine and imprisonment, and, in addition, to a further fine not exceeding £50 for every day during which the default continues.

(2) Every company incorporated in the United Kingdom and every company which, though not incorporated in the United Kingdom, has a share transfer or share registration office in the United Kingdom shall, within one month after the passing of this Act, by notice in writing communicate to the Custodian full particulars of all shares, stock, debentures, and debenture stock and other obligations of the company which are held by or for the benefit of an enemy; and every partner of every firm, one or more partners of which on the commencement of the war became enemies or to which money had been lent for the purpose of the business of the firm by a person who so became an enemy, shall, within one month after the commencement of this Act, by notice in writing, communicate to the Custodian full particulars as to any share of profits and interest due to such enemies or enemy; and if any company or partner fails to comply with the provisions of this subsection, the company shall, on conviction under the Summary Jurisdiction Acts, be liable to a fine not exceeding £100, and, in addition, to a further fine not exceeding £50 for every day during which the default continues; and the partner and every director, manager, secretary, or officer of the company who is knowingly a party to the default shall on the like conviction be liable to the like fine, or to imprisonment, with or without hard labor, for a term not exceeding six months, or to both such imprisonment and fine.

4. (1) The High Court or a judge thereof may, on the application of any person who appears to the court to be a creditor of an enemy or entitled to recover damages against an enemy, or to be interested in any

property, real or personal (including any rights, whether legal or equitable, in or arising out of property real or personal), belonging to or held or managed for or on behalf of an enemy, or on the application of the Custodian or any government department, by order vest in the Custodian any such real or personal property as aforesaid, if the court or the judge is satisfied with that such vesting is expedient for the purposes of this Act, and may by the order confer on the Custodian such powers of selling, managing, and otherwise dealing with the property as to the court or judge may seem proper.

(2) The court or judge before making any order under this section may direct that such notices, if any, whether by way of advertisement or otherwise, shall be given as the court or judge may think fit.

(3) A vesting order under this section as respects property of any description shall be of the like purport and effect as a vesting order as respects property of the same description made under the Trustee Act, 1893.

5. (1) The Custodian shall, except so far as the Board of Trade or the High Court or a judge thereof may otherwise direct, and subject to the provisions of the next succeeding subsection, hold any money paid to and any property vested in him under this Act until the termination of the present war, and shall thereafter deal with the same in such manner as His Majesty may by Order in Council direct.

(2) (As amended by 5 & 6 Geo. 5, c. 105, section 12.) The property held by the Custodian under this Act shall not be liable to be attached or otherwise taken in execution, but the Custodian may, if so authorized by an order of the High Court or a judge thereof pay out of the property paid to him in respect of that enemy the whole or any part of any debts due by that enemy and specified in the order: *Provided*, That before paying any such debt the Custodian shall take into consideration the sufficiency of the property paid to or vested in him in respect of the enemy in question to satisfy that debt and any other claims against that enemy of which notice verified by statutory declaration may have been served upon him.

(3) The receipt of the Custodian or any person duly authorized to sign receipts on his behalf for any sum paid to him under this Act shall be a good discharge to the person paying the same as against the person or body of persons in respect of whom the sum was paid to the Custodian.

(4) The Custodian shall keep a register of all property held by him under this Act, which register shall be open to public inspection at all reasonable times free of charge.

(5) In England and Ireland the Lord Chancellor and the Lord Chan-

cellor for Ireland may, by rules, and in Scotland the Court of Session may, by act of sederunt, make provision for the practice and procedure to be adopted for the purposes of this and the last preceding section.

6. (1) No person shall by virtue of any assignment of any debt or other chose in action, or delivery of any coupon or other security transferable by delivery, or transfer of any other obligation, made or to be made in his favor by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights or remedies against the person liable to pay, discharge, or satisfy the debt, chose in action, security, or obligation, unless he proves that the assignment, delivery, or transfer was made by leave of the Board of Trade or was made before the commencement of the present war, and any person who knowingly pays, discharges, or satisfies any debt, or chose in action, to which this subsection applies, shall be deemed to be guilty of the offense of trading with the enemy within the meaning of the principal Act: *Provided*, That this subsection shall not apply where the person to whom the assignment, delivery, or transfer was made, or some person deriving title under him proves that the transfer, delivery, or assignment or some subsequent transfer, delivery, or assignment was made before the 19th day of November, 1914, in good faith and for valuable consideration, nor shall this subsection apply to any bill of exchange or promissory note.

(2) No person shall, by virtue of any transfer of a bill of exchange or promissory note made or to be made in his favor by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights or remedies against any party to the instrument unless he proves that the transfer was made before the commencement of the present war, and any party to the instrument who knowingly discharges the instrument shall be deemed to be guilty of trading with the enemy within the meaning of the principal Act: *Provided*, That this subsection shall not apply where the transferee, or some subsequent holder of the instrument, proves that the transfer, or some subsequent transfer, of the instrument was made before the 19th day of November, 1914, in good faith and for valuable consideration.

(3) Nothing in this section shall be construed as validating any assignment, delivery, or transfer which would be invalid apart from this section or as applying to securities within the meaning of section 8 of this Act.

7. Where during the continuance of the present war any coupon or other security transferable by delivery is presented for payment to any company, municipal authority, or other body or person, and the company, body, or person has reason to suspect that it is so presented on

behalf or for the benefit of an enemy, or that since the commencement of the present war it has been held by or for the benefit of an enemy, the company, body, or person may pay the sum due in respect thereof into the High Court, and the same shall, subject to rules of court, be dealt with according to the orders of the court, and such a payment shall for all purposes be a good discharge to the company, body, or person.

8. (1) No transfer made after the passing of this Act by or on behalf of an enemy of any securities shall confer on the transferee any rights or remedies in respect thereof, and no company or municipal authority or other body by whom the securities were issued or are managed shall, except as hereinafter appears, take any cognizance of or otherwise act upon any notice of such a transfer.

(2) No entry shall hereafter, during the continuance of the present war, be made in any register or branch register or other book kept in the United Kingdom of any transfer of any securities therein registered, inscribed, or standing in the name of an enemy, except by leave of a court of competent jurisdiction or of the Board of Trade.

(3) No share warrants payable to bearer shall be issued during the continuance of the present war in respect of any shares or stock registered in the name of any enemy.

(4) If any company or any body contravenes the provisions of this section the company or body shall be liable on conviction, under the Summary Jurisdiction Acts, to a fine not exceeding £100, and every director, manager, secretary, or other officer of the company or body who is knowingly a party to the default, shall be liable on the like conviction to a like fine or to imprisonment, with or without hard labor, for a term not exceeding six months.

(5) For the purposes of this section the expression "securities" means any annuities, stock, shares, debentures, or debenture stock issued by or on behalf of the Government or by any municipal or other authority, or by any company or by any other body, which are registered or inscribed in any register, branch register, or other book kept in the United Kingdom.

9. (1) During the continuance of the present war a certificate of incorporation of a company shall not be given by the Registrar of Joint-Stock Companies until there has been filed with him either—

(a) A statutory declaration by a solicitor of the Supreme Court or, in Scotland, by an enrolled law agent, engaged in the formation of the company, that the company is not formed for the purpose or with the intention of acquiring the whole or any part of the undertaking of a person, firm, or company the books and documents of which are liable to inspection under subsection (2) of section 2 of the principal Act; or (b) a license from the Board of Trade authorizing the acquisition by the company of such an undertaking.

(2) Where such a statutory declaration has been filed it shall not be lawful for the company, during the continuance of the present war, without the license of the Board of Trade, to acquire the whole or any part of any such undertaking, and if it does so the company shall, without prejudice to any other liability, be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding £100, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall on the like conviction be liable to the like fine or to imprisonment, with or without hard labor, for a term not exceeding six months.

10. (1) Section 1 of the principal Act shall apply to a person who during the present war attempts, or, directly or indirectly, offers or proposes or agrees, or has since the 4th day of August, 1914, attempted or, directly or indirectly, offered or proposed or agreed to trade with the enemy within the meaning of that Act in like manner as it applies to a person who so trades or has so traded.

(2) If any person without lawful authority in anywise aids or abets any other person, whether or not such other person is in the United Kingdom, to enter into, negotiate, or complete any transaction, or do any act which, if effected or done in the United Kingdom by such other person, would constitute an offense of trading with the enemy within the meaning of the principal Act, he shall be deemed to be guilty of such an offense.

(3) If any person without lawful authority deals, or attempts, or offers, proposes, or agrees, whether directly or indirectly, to deal with any money or security for money or other property which is in his hands or over which he has any claim or control for the purpose of enabling an enemy to obtain money or credit thereon or thereby he shall be deemed to be guilty of the offense of trading with the enemy within the meaning of the principal Act.

11. (1) In addition to the grounds on which an application can be made to the court by the Board of Trade to appoint a controller under section 3 of the principal Act, such an application may be made in any case in which the Board think it is expedient in the public interest that a controller should be appointed owing to circumstances or considerations arising out of the present war, and that section shall be construed accordingly.

(2) Section 3 of the principal Act as amended by this section shall

extend so as to enable a controller to be appointed of a business carried on by a person in like manner as it applies to the appointment of a controller of a business carried on by a firm.

12. (1) Where, on the report of an inspector appointed to inspect the books and documents of a person, firm, or company under section 2 of the principal Act, it appears to the Board of Trade that it is expedient that the business should be subject to frequent inspection or constant supervision, the Board of Trade may appoint that inspector or some other person to supervise the business with such powers as the Board of Trade may determine, and any remuneration payable and expenses incurred, whether for the original inspection or the subsequent supervision to such amount as may be fixed by the Board of Trade, shall be paid by the said person, firm, or company.

(2) Paragraph (c) of subsection (2) of section 2 of the principal Act shall have effect and shall be deemed always to have had effect as if for the word "trading" there were substituted the word "resident."

13. Where a person has given any information to a person appointed to inspect the books and documents of a person, firm, or company under section 2 of the principal Act, the information so given may be used in evidence against him in any proceedings relating to offenses of trading with the enemy within the meaning of the principal Act, notwithstanding that he only gave the information on being required so to do by the inspector in pursuance of his powers under the said section.

14. (1) This Act may be cited as the Trading with the Enemy Amendment Act, 1914, and shall be construed as one with the principal Act.

(2) No person or body of persons shall for the purposes of this Act be treated as an enemy who would not be so treated for the purpose of any proclamation issued by His Majesty dealing with trading with the enemy for the time being in force, and the expression "commencement of the present war" shall mean as respects any enemy the date on which war was declared by His Majesty on the country in which that enemy resides or carries on business.

(3) In the application of this Act to Scotland "real property" shall mean "heritable property"; "personal property" shall mean "movable property"; "chose in action" shall mean "right of action"; "attached or otherwise taken in execution" shall mean "arrested in execution or in security or otherwise affected by diligence"; "assignment" shall mean "assignation"; "judgment has been recovered" shall mean "decree has been obtained"; a reference to a vesting order made under the Trustee Act, 1893, shall be construed as a reference to a warrant to complete a title granted under section 12 of the Trusts (Scotland) Act, 1867, and

any money paid into the Court of Session in terms of this Act shall be paid in such manner as may be prescribed by act of sederunt.

(4) Nothing in this Act shall be construed as limiting the powers of His Majesty by proclamation to prohibit any transaction which is not prohibited by this Act or by license to permit any transaction which is so prohibited.

TRADING WITH THE ENEMY AMENDMENT ACT, 1915

5 & 6 Geo. 5, c. 79

AN ACT TO AMEND THE TRADING WITH THE ENEMY ACTS, 1914 (JULY 29, 1915)

1. (1) Section 2 of the Trading with the Enemy Amendment Act, 1914 (hereinafter referred to as the "principal Act"), which relates to the payment to the Custodian of dividends, interest, and profits payable to or for the benefit of enemies, shall extend to sums which, had a state of war not existed, would have been payable and paid in the United Kingdom to enemies—

(a) In respect of interest on securities issued by or on behalf of the Government or the Government of any of His Majesty's Dominions or any foreign Government, or by or on behalf of any corporation or any municipal or other authority whether within or without the United Kingdom; and

(b) By way of payment off of any securities which have become repayable on maturity or by being drawn for payment or otherwise, being such securities as aforesaid or securities issued by any company; and in the case of such sums as aforesaid (other than sums in respect of the payment off of securities issued by a company) the duty of making payments to the Custodian and of requiring payments to be made to him and of furnishing him with particulars shall rest with the person, firm, or company through whom the payments in the United Kingdom are made, and the said section shall apply accordingly, and as if for references therein to the date of the passing of the principal Act there were substituted references to the date of the passing of this Act.

(2) Where the Custodian is satisfied from returns made to him under section 3 of the principal Act that any such securities as aforesaid (including securities issued by a company) are held by any person on behalf of an enemy, the Custodian may give notice thereof to the person, firm, or company by or through whom any dividends, interest, or bonus in

respect of the securities or any sums by way of payment off of the securities are payable, and upon the receipt of such notice any dividends, interest, or bonus payable in respect of, and any sums by way of payment off of, the securities to which the notice relates shall be paid to the Custodian in like manner as if the securities were held by an enemy.

(2) For the purpose of this section "securities" includes stock, shares, annuities, bonds, debentures or debenture stock or other obligations.

2. (1) Subsection (1) of section 3 of the principal Act, which requires returns to be made to the Custodian of property held or managed for or on behalf of enemies, shall apply to balances and deposits standing to the credit of enemies at any bank, and to debts to the amount of £50 or upwards, which are due or which, had a state of war not existed, would have been due to enemies, as if such bank or debtor were a person who held property on behalf of an enemy, and as if for references to the passing of the principal Act there were substituted references to the passing of this Act.

(2) The duty of making returns under the said subsection as so amended, shall extend to companies as if the expression "person" included company, and if any company fails to comply with the provisions of that subsection as so amended, every director, manager, secretary, or officer of the company who is knowingly a party to the default shall, on summary conviction, be liable to a fine not exceeding £100 or to imprisonment with or without hard labor for a term not exceeding six months or to both such a fine and imprisonment, and in addition to a further fine not exceeding £50 for every day during which the default continues.

(3) The Custodian shall keep a register of all property returns whereof have been made to him under section 3 of the principal Act as amended by this section, and such register may be inspected by any person who appears to the Custodian to be interested as a creditor or otherwise.

3. Sections 6, 7, and 8 of the principal Act shall apply as if the expression "enemy," where used in those sections, included any person or body of persons who is an enemy or treated as an enemy under any proclamations relating to trading with the enemy for the time being in force: *Provided*, That the said sections 6 and 8 shall apply as respects persons who were not enemies nor treated as enemies under the proclamations in force on the 19th day of November, 1914, with the substitution of references to the 19th day of July, 1915, for references to the said 19th day of November, and of references to the date of the passing of this Act for references to the date of the passing of the principal Act, and except in cases where a license has been duly granted exempting any particular transaction from the provisions of any of the said sections.

4. No action shall be brought or other proceedings commenced by a company the books and documents of which are liable to inspection under subsection (2) of section 2 of the Trading with the Enemy Act, 1914, unless notice in writing has previously been given by the company to the Custodian of their intention.

5. This Act may be cited as the Trading with the Enemy Amendment Act, 1915, and shall be construed as one with the principal Act; and the Trading with the Enemy Act, 1914, the Trading with the Enemy Amendment Act, 1914, and this Act shall be cited together as the Trading with the Enemy Acts, 1914 and 1915.

TRADING WITH THE ENEMY AMENDMENT ACT, 1916

5 & 6 Geo. 5, c. 105

AN ACT TO AMEND THE TRADING WITH THE ENEMY ACTS. (JANUARY 27, 1916)

1. (1) Where it appears to the Board of Trade that the business carried on in the United Kingdom by any person, firm, or company is, by reason of the enemy nationality or enemy association of that person, firm, or company, or of the members of that firm or company or any of them, or otherwise, carried on wholly or mainly for the benefit of or under the control of enemy subjects, the Board of Trade shall, unless for any special reason it appears to them inexpedient to do so, make an order either—

(a) Prohibiting the person, firm, or company from carrying on the business, except for the purposes and subject to the conditions, if any, specified in the order; or

(b) Requiring the business to be wound up.

The Board of Trade may at any time revoke or vary any such order, and may, in any case where they have made an order prohibiting or limiting the carrying on of the business, at any time, if they think it expedient, substitute for that order an order requiring the business to be wound up.

(2) Where the Board of Trade make any such order they may at the same time or at any time subsequently appoint a controller to control and supervise the carrying out of the order and, if the case requires to conduct the winding-up of the business, and in any case where it appears expedient to the Board of Trade, the Board may, as occasion requires, confer on the controller such powers as are exercisable by a

liquidator in a voluntary winding-up of a company (including power in the name of the person, firm, or company, or in his own name, and by deed or otherwise, to convey or transfer any property, and power to apply to the High Court or a judge thereof to determine any question arising in the carrying out of the order), or those powers subject to such modifications, restrictions, or extensions as the Board think necessary or convenient for the purpose of giving full effect to the order, and the remuneration of and costs, charges, and expenses incurred by the controller, and any remuneration payable and costs, charges, and expenses incurred in connection with the supervision or inspection of the business, whether before or after the passing of this Act, to such amount as may be approved by the Board, shall be defrayed out of the assets of the business, and shall be charged on such assets in priority to any other charges thereon.

In England and Wales an official receiver may, if the Board of Trade think fit, be appointed controller.

(3) The distribution of any sums or other property resulting from the realization of any assets of the business, whether those assets are realized as the result of an order requiring the business to be wound up or as the result of an order prohibiting or limiting the carrying on of the business, shall be subject to the same rules as to preferential payments as are applicable to the distribution of the assets of a company which is being wound up, and these assets shall, so far as they are available for discharging unsecured debts, be applied in discharging such debts due to creditors who are not enemies in priority to the unsecured debts due to creditors who are enemies; and any balance, after providing for the discharge of liabilities, shall be distributed amongst the persons interested therein in such manner as the Board of Trade may direct:

Provided, That any sums or other property which had a state of war not existed would have been payable or transferable under this section to enemies, whether as creditors or otherwise, shall be paid or transferred to the Custodian under the Trading with the Enemy Amendment Act, 1914, to be dealt with by him in like manner as money paid to him under that Act.

(4) Where there are assets of the business in enemy territory, the controller shall cause an estimate to be prepared of the value of those assets and also of the liabilities of the business to creditors, whether secured or unsecured, in enemy territory, and of the claims of persons in enemy territory to participate in the distribution of any balance available for distribution, and such liabilities and claims shall, for the purposes of this section, be deemed to have been satisfied out of such assets so far as they

are capable of bearing them, and the balance (if any) of such liabilities and claims shall alone rank for payment out of the other assets of the business. A certificate by the controller as to the amount of such assets, liabilities, claims, and balance shall be conclusive for the purpose of determining the sums available for discharging the other liabilities and for distribution amongst other persons claiming to be interested in the business:

Provided, That nothing in this provision shall affect the rights of creditors of and other persons interested in the business against the assets of the business in enemy territory.

(5) The Board of Trade may, on application for the purpose being made by a controller appointed under this section, after considering the application and any objection which may be made by any person who appears to them to be interested, grant him a release, and an order of the Board releasing the controller shall discharge him from all liability in respect of any act done or default made by him in the exercise and performance of his powers and duties as controller, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(6) If any person contravenes the provisions of any order made under this section he shall be guilty of a misdemeanor punishable and triable in like manner as the offense of trading with the enemy, and section 1 of the Trading with the Enemy Act, 1914, shall apply accordingly.

(7) Where an order under this section has been made as respects the business carried on by any person, firm, or company, no bankruptcy, petition, or petition for sequestration or summary sequestration against such person or firm or petition for the winding-up of such company shall be presented, or resolution for the winding-up of such company passed, or steps for the enforcement of the rights of any creditors of the person, firm, or company taken without the consent of the Board of Trade, but the Board of Trade may present a petition for the winding-up of the company by the court, and the making of an order under this section shall be a ground on which the company may be wound up by the court.

(8) The Board of Trade shall from time to time prepare and lay before Parliament lists of the persons, firms, and companies as to whom orders have been made under this section, together with short particulars of such orders, and notice of the making of an order under this section prohibiting or limiting the carrying on of any business, or requiring any business to be wound up, shall be published in the London, Edinburgh, or Dublin Gazette, as the case may require.

(9) Where a person, being a subject of His Majesty or of any State allied to His Majesty, is detained in enemy territory against his will,

that person, for the purposes of this section, shall not be treated as an enemy or as being in enemy territory.

(10) An order made under this section shall continue in force, notwithstanding the termination of the present war, until determined by order of the Board of Trade.

2. Where it appears to the Board of Trade that a contract entered into before or during the war with an enemy or enemy subject, or with a person, firm, or company in respect of whose business an order shall have been made under section 1 of this Act, is injurious to the public interest, the Board of Trade may by order cancel or determine such contract either unconditionally or upon such conditions as the Board may think fit, and thereupon such contract shall be deemed to be canceled or determined accordingly.

3. The power of the Board of Trade to appoint inspectors and supervisors under the Trading with the Enemy Acts, 1914 and 1915, shall include a power to appoint an inspector or supervisor of the business carried on by any person, firm, or company in the United Kingdom for the purpose of ascertaining whether the business is carried on for the benefit of or under the control of enemy subjects, or for the purpose of ascertaining the relations existing, or which, before the war existed, between such person, firm, or company, or of any members of that firm or company and any such subject; and the Board of Trade may require any inspector, supervisor, or controller appointed under the said Acts or this Act to furnish them with reports on any matters connected with the business.

4. (1) The Board of Trade, in any case where it appears to them to be expedient to do so, may by order vest in the Custodian under the Trading with the Enemy Amendment Act, 1914, any property, real or personal (including any rights, whether legal or equitable, in or arising out of property, real or personal), belonging to or held or managed for or on behalf of an enemy or enemy subject, or the right to transfer that property, and may by any such order, or any subsequent order, confer on the Custodian such powers of selling, managing, and otherwise dealing with the property as to the Board may seem proper.

(2) A vesting order under this section as respects property of any description shall be of the like purport and effect as a vesting order as respects property of the same description made by the High Court under the Trustee Act, 1893, and shall be sufficient to vest in the Custodian any property, or the right to transfer any properly as provided by the order, without the necessity of any further conveyance, assurance, or document.

(3) Where in exercise of the powers conferred on him by the Board of

Trade or by the court under this Act or by virtue of the Trading with the Enemy Amendment Act, 1914, the Custodian proposes to sell any shares or stock forming part of the capital of any company or any securities issued by the company in respect of which a vesting order under either of the said enactments has been made, the company may, with the consent of the Board of Trade, purchase the shares, stock, or securities, any law or any regulation of the company to the contrary notwithstanding, and any shares, stock, or securities so purchased may from time to time be reissued by the company.

(4) The transfer on sale by the Custodian of any property shall be conclusive evidence in favor of the purchaser and of the Custodian that the requirements of this section have been complied with.

(5) All property vested in the Custodian under this section, and the proceeds of the sale of, or money arising from, any such property shall be dealt with by him in like manner as money paid to and property vested in him under the Trading with the Enemy Amendment Act, 1914, and section 5 of that Act as amended by this Act shall apply accordingly.

5. It shall be the duty of every enemy subject who is within the United Kingdom, if so required by the Custodian, within one month after being so required, to furnish the Custodian with such particulars as to—

(a) Any stocks, shares, debentures, or other securities issued by any company, government, municipal, or other authority held by him or in which he is interested; and

(b) Any other property of the value of £50 or upward belonging to him or in which he is interested—

as the Custodian may require, and if he fails to do so he shall, on conviction under the Summary Jurisdiction Acts, be liable to a fine not exceeding £100, or to imprisonment with or without hard labor for a term not exceeding six months, or to both such a fine and imprisonment, and, in addition, to a further fine not exceeding £50 for every day during which the default continues.

6. If the benefit of an application made by or on behalf or for the benefit of an enemy or enemy subject for any patent is, by an order under the Trading with the Enemy Amendment Act, 1914, or this Act, vested in the Custodian, the patent may be granted to the Custodian as patentee and may, notwithstanding anything in section 12 of the Patents and Designs Act, 1907, be sealed accordingly by the Comptroller-General of Patents, Designs, and Trade-Marks, and any patent so granted to the Custodian shall be deemed to be property vested in him by such order as aforesaid.

7. Any restrictions imposed by any act or proclamation on dealings

with enemy property shall continue to apply to property particulars whereof are or are liable to be notified to the Custodian in pursuance of section 3 of the Trading with the Enemy Amendment Act, 1914, as extended by any subsequent enactment, not only during the continuance of the present war, but thereafter until such time as they may be removed by Order in Council, and Orders in Council may be made removing all or any of those restrictions either simultaneously as respects all such property or at different times as respects different classes or items of property.

8. (1) Where the Custodian executes a transfer of any shares, stock, or securities which he is empowered to transfer by a vesting order made under section 4 of the Trading with the Enemy Amendment Act, 1914, or under this Act, the company or other body in whose books the shares, stock, or securities are registered shall, upon the receipt of the transfer so executed by the Custodian, and upon being required by him so to do, register the shares, stock, or securities in the name of the Custodian or other transferee, notwithstanding any regulation or stipulation of the company or other body, and notwithstanding that the Custodian is not in possession of the certificate, script, or other document of title relating to the shares, stock, or securities transferred, but such registration shall be without prejudice to any lien or charge in favor of the company or other body or to any other lien or charge of which the Custodian has notice.

(2) If any question arises as to the existence or amount of any lien or charge the question may, on application being made for the purpose, be determined by the High Court or a judge thereof.

9. Where a vesting order has been made under section 4 of the Trading with the Enemy Amendment Act, 1914, or under this Act as respects any property belonging to or held or managed for or on behalf of a person who appeared to the court or board making the order to be an enemy or enemy subject, the order shall not nor shall any proceedings thereunder or in consequence thereof be invalidated or affected by reason only of such person having, prior to the date of the order, died or ceased to be an enemy or enemy subject or subsequently dying or ceasing to be an enemy or enemy subject, or by reason of its being subsequently ascertained that he was not an enemy or an enemy subject, as the case may be.

10. (1) Where on an application for the registration of a company it appears to the Registrar of Joint-Stock Companies that any subscriber of the memorandum of association or any proposed director of the company is an enemy subject, he may refuse to register the company.

(2) No allotment or transfer of any share, stock, debenture, or other security issued by a company made after the passing of this Act to or for the benefit of an enemy subject shall, unless made with the consent

of the Board of Trade, confer on the allottee or transferee any rights or remedies in respect thereof, and the company by whom the security was issued shall not take any cognizance of or otherwise act upon any notice of any such transfer except by leave of a court of competent jurisdiction or of the Board of Trade.

If any company contravenes the provisions of this section the company shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding £100, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall be liable on conviction to a fine for a like amount or to imprisonment, with or without hard labor, for a term not exceeding six months.

(3) Where the right of nominating or appointing a director of a company is vested in any enemy or enemy subject the right shall not be exercisable except by leave of the Board of Trade, and any director nominated or appointed in exercise of such right shall, except as aforesaid, cease to hold office as director.

11. Where the Board of Trade certify that it appears to them that a company registered in the United Kingdom is carrying on business either directly or through an agent, branch, or subsidiary company outside the United Kingdom, and that in carrying on such business it has entered into or done acts which if entered into or done in the United Kingdom would constitute the offense of trading with the enemy, the Board of Trade may present a petition for the winding-up of the company by the court, and the issue of such a certificate shall be a ground on which the company may be wound up by the court, and the certificate shall, for the purposes of the petition, be evidence of the facts therein stated.

12. In subsection (2) of section 5 of the Trading with the Enemy Amendment Act, 1914, for the words "by whose order any property belonging to an enemy was vested in the Custodian under this Act or of any court in which judgment has been reported against an enemy" there shall be substituted the word "thereof."

13. For removing doubts it is hereby declared that the Custodian under the Trading with the Enemy Acts, 1914 and 1915, has and shall be deemed always to have had power to charge such fees in respect of his duties under that Act and this Act, whether by way of percentage or otherwise, as the Treasury may fix, and such fees shall be collected and accounted for by such persons in such manner and shall be paid to such account as the Treasury direct, and the incidence of the fees as between capital and income shall be determined by the Custodian.

14. All things required or authorized under the Trading with the Enemy Acts, 1914 and 1915, or this Act to be done by, to, or before the Board of

Trade, may be done by, to, or before the President or a Secretary or an Assistant Secretary of the Board of Trade or any person authorized in that behalf by the President of the Board of Trade.

15. In this Act the expression "enemy subject" means a subject of a State for the time being at war with His Majesty, and includes a body corporate constituted according to the laws of such a State.

16. This Act may be cited as the Trading with the Enemy Amendment Act, 1916, and shall be construed as one with the Trading with the Enemy Acts, 1914 and 1915, and those Acts and this Act may be cited together as the Trading with the Enemy Acts, 1914 to 1916.

TRADING WITH THE ENEMY (EXTENSION OF POWERS) ACT, 1915

5 & 6 Geo. 5, c. 98

AN ACT TO PROVIDE FOR THE EXTENSION OF THE RESTRICTIONS RELATING TO TRADING WITH THE ENEMY TO PERSONS TO WHOM, THOUGH NOT RESIDENT OR CARRYING ON BUSINESS IN ENEMY TERRITORY, IT IS BY REASON OF THEIR ENEMY NATIONALITY OR ENEMY ASSOCIATIONS EXPEDIENT TO EXTEND SUCH RESTRICTIONS. (DECEMBER 23, 1915)

1. (1) His Majesty may by proclamation prohibit all persons or bodies of persons, incorporated or unincorporated, resident, carrying on business, or being in the United Kingdom from trading with any persons or bodies of persons not resident or carrying on business in enemy territory or in territory in the occupation of the enemy (other than persons or bodies of persons, incorporated or unincorporated, residing or carrying on business solely within His Majesty's dominions) wherever by reason of the enemy nationality or enemy association of such persons or bodies of persons, incorporated or unincorporated, it appears to His Majesty expedient so to do, and if any person acts in contravention of any such proclamation he shall be guilty of a misdemeanor triable and punishable in like manner as the offense of trading with the enemy.

(2) Any list of persons and bodies of persons, incorporated or unincorporated, with whom such trading is prohibited by a proclamation under this Act may be varied or added to by an order made by the Lords of the Council on the recommendation of a Secretary of State.

(3) The provisions of the Trading with the Enemy Acts, 1914 and

1915, and of the Customs (War Powers, No. 2) Act, 1915, and all other enactments relating to trading with the enemy, shall, subject to such exceptions and adaptations as may be prescribed by Order in Council, apply in respect of such persons and bodies of persons as aforesaid as if for reference therein to trading with the enemy there were substituted references to trading with such persons and bodies of persons as aforesaid, and for references to enemies there were substituted references to such persons and bodies of persons as aforesaid, and for references to offenses under the Trading with the Enemy Acts, 1914 and 1915, or any of those acts, there were substituted references to offenses under this Act.

(4) For the purposes of this Act a person shall be deemed to have traded with a person or body of persons to whom a proclamation issued under this Act applies, if he enters into any transaction or does any act with, to, on behalf of, or for the benefit of such a person or body of persons which if entered into or done with, to, on behalf of, or for the benefit of an enemy would be trading with the enemy.

2. This Act may be cited as the Trading with the Enemy (Extension of Powers) Act, 1915.

TRADING WITH THE ENEMY (COPYRIGHT) ACT, 1916

6 & 7 Geo. 5, c. 32

AN ACT TO MAKE PROVISION WITH RESPECT TO COPYRIGHT IN WORKS FIRST PUBLISHED OR MADE IN AN ENEMY COUNTRY DURING THE PRESENT WAR. (AUGUST 10, 1916)

Whereas doubts have arisen with respect to the existence of copyright in works first published or made in an enemy country during the present war, the copyright wherein would, had a state of war not existed, have vested in any person as the first owner thereof by virtue of the application to an enemy country of any Order in Council made under the Copyright Act, 1911, and it is expedient to make such provision as is hereinafter contained with respect to copyright in such works:

1. Copyright in all such works, whether first published or made after or before the passing of this Act, shall be deemed to vest or to have vested in the Public Trustee in his capacity as Custodian under the Trading with the Enemy Amendment Act, 1914; and the Public Trustee shall,

subject to regulations made by the Board of Trade, have all such powers rights, and remedies in relation to the work as such person as aforesaid would, had a state of war not existed, have had; and all copyrights so vested in the Public Trustee, and any money arising from the exercise of his rights as the owner of any such copyright, shall be dealt with by him in like manner as property vested in him under the Trading with the Enemy Amendment Act, 1914, and section 5 of that Act as amended by any subsequent enactment shall apply accordingly:

Provided, That where, before the passing of this Act, any person has taken any action whereby he has incurred expenditure or liability in connection with the reproduction or performance of any such work as aforesaid the Public Trustee shall, on application for the purpose being made within six months after the passing of this Act, grant to him a license to reproduce or perform the work on such terms and conditions as, in the opinion of the Public Trustee, are fair and reasonable.

2. This Act may be cited as the Trading with the Enemy (Copyright) Act, 1916, and shall be construed as one with the Trading with the Enemy Amendment Act, 1914.

TRADING WITH THE ENEMY AND EXPORT OF PROHIBITED GOODS ACT, 1916

6 & 7 Geo. 5, c. 52

AN ACT TO AMEND THE LAW RELATING TO TRADING WITH THE ENEMY AND THE EXPORT OF PROHIBITED GOODS. (DECEMBER 18, 1916)

1. If for the purpose of obtaining any license, authority, or approval for any transaction or matter under or in connection with any proclamation or act relating to trading with the enemy or for the purpose of obtaining a license to export any goods the exportation of which without a license is prohibited under any proclamation or order in or of council any person—

(a) makes or presents any declaration or statement or representation which is false in any material particular; or

(b) produces a guaranty, certificate, or undertaking which is false in any material particular, or has not been given by the person by whom it purports to have been given, or which has been in any way altered or tampered with;

he shall be liable, on summary conviction, to a fine not exceeding £500, or, alternatively, in the case of goods for export, treble the value of the goods, or to imprisonment with or without hard labor for a term not exceeding three months, or to both such fine and imprisonment, unless he proves that he had taken all reasonable steps to ascertain the truth of the statements made or contained in any document so presented or produced or to satisfy himself of the genuineness of the guaranty, certificate, or undertaking.

2. Where a person has been authorized under section 2 of the Trading with the Enemy Act, 1914, to inspect the books and documents of any person, firm, or company, and any book or document is found by him to have been destroyed, mutilated, or falsified, any person having or having had control of such book or document shall be guilty of a misdemeanor and liable to the same punishment as if he had been guilty of trading with the enemy unless he proves that the destruction, mutilation, or falsification was not intended for the purpose of concealing any transaction which would constitute an offense of trading with the enemy.

3. For removing doubts, it is hereby declared—

(a) That in section 2 of the Customs (Exportation Restriction) Act, 1915 (which relates to penalties in respect of the exportation of goods in contravention of any proclamation or order in or of council under section 8 of the Customs and Inland Revenue Act, 1879, or the Exportation of Arms Act, 1900, as amended by any subsequent enactments), the reference to goods exported includes goods brought to any quay or other place to be shipped for exportation in the United Kingdom; and

(b) That in section 186 of the Customs Consolidation Act, 1876 (which relates to illegal dealings in goods subject to prohibitions and restrictions), the references to prohibited or restricted goods and to any prohibitions and restrictions includes (except where the context otherwise requires) references to goods the exportation of which is prohibited or restricted and to prohibitions and restrictions on the export of goods.

4. This Act may be cited as the Trading with the Enemy and Export of Prohibited Goods Act, 1916.

II. Dominion of Canada

CONSOLIDATED ORDERS RESPECTING TRADING WITH THE ENEMY. (MAY 2, 1916)

[P. C. 1023]

1. (1) For the purposes of these Orders and Regulations, the following expressions shall be construed so that—

(a) "Person" shall extend to and include persons and bodies of persons, incorporated and unincorporated, such as firms, clubs, companies, and municipal authorities, and, as well, trustees, executors, and administrators.

(b) "Enemy" shall extend to and include a person (as defined in this order) who resides or carries on business within territory of a State or sovereign for the time being at war with His Majesty, or who resides or carries on business within territory occupied by a State or sovereign for the time being at war with His Majesty, and, as well, any person wherever resident or carrying on business, who is an enemy or treated as an enemy and with whom dealing is for the time being prohibited by statute, proclamation, the following Orders and Regulations, or the common law; but said expression does not include a subject of His Majesty or of any State or sovereign allied to His Majesty who is detained in enemy territory against his will, nor shall such last-mentioned person be treated as being in enemy territory.

(c) "Enemy subject" extends to and includes a person (as defined in this order), wherever resident, who is a subject of a State or sovereign for the time being at war with His Majesty. (Br. 1916, s. 15.)

(d) "Securities" shall extend to and include stock, shares, annuities, bonds, debentures, or debenture stock or other obligations issued by or on behalf of any Government, municipal or other authority, or any corporation or company, whether within or without Canada. [Br. Cap. 79/15, s. 1 (3); Br. Cap. 12/14, s. 8; Br. Cap. 79/15, s. 3, Interp. "Enemy."]

(e) "Dividends, interest, or share or profits" shall extend to and include any dividends, bonus, or interest in respect of any shares, stock, debentures, debenture stock, or other obligations of any company, any interest in respect of any loan to a firm or person carrying on business for the purposes of that business, and any profits or share of profits of such a business, and, where a person is carrying on any business on behalf of an enemy, any sum which, had a state of war not existed, would have been transmissible by a person to the enemy by way of profits from that business, shall be deemed to be a sum which would have been payable and paid to that enemy. [Br. Cap. 12/14, s. 2 (5); Br. Cap. 79/15, s. 1 (3).]

(f) "Commencement of the present war" shall mean, as respects any enemy, the date on which war was declared by His Majesty on the country in which that enemy resides or carries on business. [Br. Cap. 12/14, s. 14 (2).]

2. Any person who during the present war trades or attempts to trade, or directly or indirectly offers or proposes or agrees to trade, or has since the 4th day of August, 1914, traded, attempted, or directly or indirectly offered or proposed or agreed to trade, with the enemy, within the meaning of these Orders and Regulations, shall be guilty of an offense. [P. C. 2724, Oct. 30, 1914, part sec. 1, Br. Cap. 87/14. Amendment sec. 10 (1), Br. Cap. 12/14.]

3. Without restricting the generality of the terms of the immediately preceding order, it is declared that the following set forth matters constitute trading with the enemy within the meaning of these Orders and Regulations:

(1) Entering into any transaction or doing any act which was at the time of such transaction or act prohibited by or under any proclamation issued by His Majesty, for the time being in force, dealing with trading with the enemy, or which at common law or by statute or under any Orders or Regulations, constitutes an offense of trading with the enemy. (P. C. 2724, Oct. 30, 1914. Part sec. 1, Br. Cap. 87/14.)

(2) Entering into any transaction or doing any act with, to, or on behalf of or for the benefit of, any person (other than a person resident or carrying on business solely within His Majesty's Dominions) after the issue of any proclamation by His Royal Highness the Governor-General of Canada, declaring that such person, although not resident or carrying on business in enemy territory or in territory in occupation of the enemy, was, by reason of his enemy nationality or enemy associations, a person with whom trading was prohibited, and which transaction or act, if entered into or done with, to, or on behalf of or for the benefit of an enemy would be trading with the enemy. (Br. Cap. 98/15.)

(3) Dealing or attempting or offering, proposing, or agreeing, whether directly or indirectly, to deal with any money or security for money or other property which is in the hands of the person so dealing, attempting, or offering, proposing, or agreeing, or over which he has any claim or control, for the purpose of enabling an enemy to obtain money or credit thereon or thereby. [Sec. 10 (3), Br. Cap. 12/14.]

(4) Aiding or abetting any other person, whether or not such person is in Canada, to enter into, negotiate, or complete any transaction or do any act which, if effected or done in Canada by such other person, would constitute an offense of trading with the enemy. [Sec. 10 (2), Br. Cap. 12/14.]

(5) Knowingly paying, discharging, or satisfying any debt or chose in action to which subsection (1) of order 4 hereof applies.

(6) The knowingly discharging by any party to the instrument of any bill of exchange or promissory note to which subsection (2) of order 4 hereof applies.

Provided, That any transaction or act permitted by or under any proclamation or otherwise by competent authority shall not be deemed to be trading with the enemy. [Br. 87/14, sec. 1 (2); Can. P. C., 2724.]

4. (1) No person shall by virtue of any assignment of any debt or other chose in action, or delivery of any coupon or other security transferable by delivery, or transfer of any other obligation, made or to be made in his favor by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights or remedies against the person liable to pay, discharge, or satisfy the debt, chose in action, security, or obligation, unless he proves that the assignment, delivery, or transfer was made by leave of the Secretary of State or was made before the commencement of the present war; and any person who knowingly pays, discharges, or satisfies any debt or chose in action to which this subsection applies shall be deemed guilty of the offense of trading with the enemy: *Provided*, That this subsection shall not apply where a license has been duly granted exempting the particular transaction from the provisions of this order or where the person to whom the assignment, delivery, or transfer was made, or some person deriving title under him, proves that the transfer, delivery, or assignment or some subsequent transfer, delivery, or assignment was made in good faith and for valuable consideration before the publication in the Canada Gazette of these Orders and Regulations, nor shall this subsection apply to any bill of exchange or promissory note. (Br. Cap. 12/14, s. 6; Br. Cap. 79/15, s. 3, and Interp. "Enemy.")

(2) No person shall by virtue of any transfer of a bill of exchange or promissory note made or to be made in his favor by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights or remedies against any party to the instrument unless he proves that the transfer was made before the commencement of the present war, and any party to the instrument who knowingly discharges the

instrument shall be deemed to be guilty of the offense of trading with the enemy: *Provided*, That this subsection shall not apply where a license has been duly granted exempting the particular transaction from the provisions of this subsection, or where the transferee or some subsequent holder of the instrument proves that the transfer or some subsequent transfer of the instrument was made in good faith and for valuable consideration before the publication in the Canada Gazette of these Orders and Regulations. (Br. Cap. 12/14, s. 6; Br. Cap. 79/15, s. 3.)

(3) Nothing in this order shall be construed as validating any assignment, delivery, or transfer which would be invalid apart from this order or as applying to securities within the meaning of order 6 of these Orders and Regulations.

5. Where during the continuance of the present war any coupon or other security transferable by delivery is presented for payment to any company, municipal authority, or other body or person, and the company, body, or person has reason to suspect that it is so presented on behalf or for the benefit of an enemy, or that since the commencement of the present war it has been held by or for the benefit of an enemy, the company, body, or person may pay the sum due in respect thereof into any superior court of record in the Province where the same is payable, and the same shall, subject to rules of court, be dealt with according to the orders of the court, and such a payment shall for all purposes be a good discharge to the company, body, or person. (Br. Cap. 12/14, s. 7; Br. Cap. 79/15, s. 3, Interp. "Enemy.")

6. (1) No transfer made after the publication of these Orders and Regulations in the Canada Gazette (unless upon license duly granted exempting the particular transaction from the provisions of this subsection) by or on behalf of an enemy of any securities shall confer on the transferee any rights or remedies in respect thereof, and no company or municipal authority or other body by whom the securities were issued or are managed shall, except as hereinafter appears, take any cognizance of or otherwise act upon any notice of such a transfer. (Br. Cap. 12/14, s. 8; Br. Cap. 79/15, s. 3; Interp. "Enemy.")

(2) No entry shall hereafter, during the continuance of the present war, be made in any register or branch register or other book kept within Canada of any transfer of any securities therein registered, inscribed, or standing in the name of an enemy, except by leave of a court of competent jurisdiction or of the Secretary of State. (Br. Cap. 12/14, s. 8; Br. Cap. 79/15, s. 3; Interp. "Enemy.")

(3) No share warrants payable to bearer shall be issued during the continuance of the present war in respect of any shares or stock regis-

tered in the name of any enemy. (Br. Cap. 12/14, s. 8; Br. Cap. 79/15, s. 3; Interp. "Enemy.")

(4) Any violation of any provision of this order shall be an offense against these Orders and Regulations.

7. If a stipendiary magistrate is satisfied, on information on oath laid on behalf of the Secretary of State, that there is reasonable ground for suspecting that an offense under any of orders 2 to 6, inclusive, of these Orders and Regulations has been or is about to be committed by any person who is within the territorial jurisdiction of said stipendiary magistrate, he may issue a warrant authorizing any person appointed by the Secretary of State and named in the warrant to inspect all books or documents belonging to or under the control of that person, and to require any person able to give any information with respect to the business or trade of the suspected person, to give that information, and if accompanied by a police officer to enter and search any premises used in connection with the business or trade, and to seize any such books or documents as aforesaid: *Provided*, That if it appears to the Secretary of State that the case is one of great emergency and that in the interests of the State immediate action is necessary, the Secretary of State may, by written order, give to a person appointed by him the like authority as may be given by a warrant of a stipendiary magistrate under this section. [Br. Cap. 87/14, s. 2 (1).]

8. (1) Where it appears to the Secretary of State—

(a) That one of the partners in a firm was immediately before or at any time since the commencement of the present war a subject of, or resident or carrying on business in, a State for the time being at war with His Majesty; or

(b) That one-third or more of the issued share-capital or the directorate of a company immediately before or at any time since the commencement of the present war was held by or on behalf of or consisted of persons who were subjects of, or residents or carrying on business in, a State for the time being at war with His Majesty; or

(c) That a person, firm, or company was or is acting as agent for any person, firm, or company trading or carrying on business in a State for the time being at war with His Majesty;

The Secretary of State may, if he thinks it expedient for the purpose of satisfying himself that the person, firm, or company is not trading with the enemy, by written order given to a person appointed by him, without any warrant from a stipendiary magistrate, authority to inspect all books and documents belonging to or under the control of the person, firm, or company, and to require any person able to give information with respect to the business or trade of that person, firm, or company, to give that information. [Br. Cap. 87/14, s. 2 (2).]

(2) No action shall be brought or other proceedings commenced by a company, the books and documents of which are liable to inspection under this order, unless notice in writing has previously been given by the company to the Custodian of their intention. (Br. Cap. 79/15, s. 4.)

9. Any person who, having the custody of any book or document which a person is authorized to inspect under orders 7 or 8 hereof, refuses or willfully neglects to produce it for inspection, and any person who being able to give any information which may be required to be given under said orders 7 or 8 refuses or willfully neglects when required to give that information, shall be guilty of an offense against these Orders and Regulations.

10. For the purposes of order 8 hereof any person authorized in that behalf by the Secretary of State may inspect the register of members of a company at any time, and any shares in a company for which share warrants to bearer have been issued shall not be reckoned as part of the issued share capital of the company. [Br. Cap. 87/14, s. 2 (2).]

11. Where a person has given any information to a person appointed to inspect the books and documents of a person, firm, or company, under orders 7 or 8 hereof, the information so given may be used in evidence against him in any proceedings relating to offenses of trading with the enemy within the meaning of these Orders and Regulations, notwithstanding that he only gave the information on being required so to do by the inspector, in pursuance of his powers under the said Orders. (Br. Cap. 12/14, s. 13.)

12. Where, on the report of an inspector appointed to inspect the books and documents of a person, firm, or company, under orders 7 or 8 hereof, it appears to the Secretary of State that it is expedient that the business should be subject to frequent inspection or constant supervision, the Secretary of State may appoint that inspector or some other person to supervise the business, with such powers as the Secretary of State may determine, and any remuneration payable and expenses incurred, whether for the original inspection or the subsequent supervision, to such amount as may be fixed by the Secretary of State, shall be paid by the said person, firm, or company. [Br. Cap. 12/14, sec. 12 (1).]

13. (1) Where it appears to the Secretary of State in reference to any person, firm, or company—

(a) That an offense against any of these Orders and Regulations has been or is likely to be committed in connection with his or its trade or business; or

(b) That the control or management of said trade or business has been or is likely to be so affected by the state of war as to prejudice the effective continuance thereof and that it is in the public interest that the said trade or business should continue to be carried on; or

(c) That it is expedient in the public interest owing to circumstances or considerations arising out of the present war that a controller or manager of said trade or business should be appointed.

The Secretary of State may apply to the same court as would, within the Province wherein said person, firm, or company carries on said trade or business, have jurisdiction to appoint a receiver under the Companies Winding-Up Act of Canada for the appointment of a controller of the firm or company, and said court shall have power to appoint such a controller for such time and subject to such conditions and with such powers as the court thinks fit; and the powers so conferred shall be either those of a receiver and manager or those powers subject to such modifications, restrictions, or extensions as the court thinks fit (including, if the court considers it necessary or expedient for enabling the controller to borrow money, power, after a special application to the court for that purpose, to create charges on the property of the firm or company in priority to existing charges).

(2) The court shall have power to direct how and by whom the costs of any proceedings under this order, and the remuneration, charges, and expenses of the controller, shall be borne, and shall have power, if it thinks fit, to charge such costs, charges, and expenses on the property of the firm or company in such order of priority, in relation to any existing charges thereon, as it thinks fit. [Br. Cap. 87/14, sec. 3, and Br. Cap. 12/14, sec. 11 (1) and 11 (2).]

14. Where the Secretary of State certifies that it appears to him that a company registered within Canada is carrying on business either directly or through an agent, branch, or subsidiary company outside Canada, and that in carrying on such business it has entered into or done acts which, if entered into or done within Canada, would constitute the offense of trading with the enemy, the Secretary of State may present a petition for the winding-up of the company by the court under the Companies Winding-Up Act of Canada, and the issue of such a certificate shall be a ground on which the company may be wound up by the court, and the certificate shall, for the purposes of the petition, be evidence of the facts therein stated. (Br. 1916, sec. 11.)

15. No company shall during the continuance of the present war,

without the license of the Secretary of State previously obtained, acquire or attempt to acquire the whole or any part of the undertaking of a person, firm, or company the books and documents of which are liable to inspection under order 7 or 8 hereof. [Br. 12/14, sec. 9 (1).]

16. Any company which in violation of order 15 hereof acquires or attempts to acquire the whole or any part of the undertaking of a person, firm, or company the books and documents of which are liable to inspection under order 7 or 8 hereof shall, without prejudice to any other liability, be guilty of an offense against these Orders and Regulations.

17. (1) Where it appears to the Secretary of State that the business carried on within Canada by any person, firm, or company is, by reason of the enemy nationality or enemy association of that person, firm, or company, or of the members of that firm or company or any of them, or otherwise carried on wholly or mainly for the benefit of or under the control of enemy subjects, the Secretary of State shall, unless for any special reason it appears to him inexpedient to do so, make an order either—

(a) Prohibiting the person, firm, or company from carrying on the business, except for the purposes and subject to the conditions, if any, specified in the order; or

(b) Requiring the business to be wound up.

(2) The Secretary of State may at any time revoke or vary any such order, and may in any case where he has made an order prohibiting or limiting the carrying on of the business, at any time, if he thinks it expedient, substitute for that order an order requiring the business to be wound up. [Br. 1916, sec. 1 (1).]

(3) Where the Secretary of State makes any such order he may at the same time or at any time subsequently appoint a controller to control and supervise the carrying out of the order; and, if the case requires, to conduct the winding-up of the business; and in any case where it appears expedient to the Secretary of State, he may, as occasion requires, confer on the controller such powers as are exercisable by a liquidator in a voluntary winding-up of a company (including power in the name of the person, firm, or company, or in his own name, and by deed or otherwise to convey or transfer any property and power to apply to the court having jurisdiction in winding-up proceedings under the Companies Winding-Up Act of Canada, or a judge thereof, to determine any question arising in the carrying out of the order, or those powers subject to such modifications, restrictions, or extensions as the Secretary of State thinks necessary or convenient for the purpose of giving full effect to the order, and the

remuneration of and costs, charges and expenses incurred by the controller, and any remuneration payable and costs, charges and expenses incurred in connection with the supervision or inspection of the business, to such amount as may be approved by the Secretary of State, shall be defrayed out of the assets of the business and shall be charged on such assets in priority to any other charges thereof. [Br. 1916, sec. 1 (2).]

(4) The distribution of any sums or other property resulting from the realization of any assets of the business, whether these assets are realized as the result of an order requiring the business to be wound up or as the result of an order prohibiting or limiting the carrying on of the business, shall be subject to the same rules as to preferential payments as are applicable to the distribution of the assets of a company which is being wound up under the Companies Winding-Up Act of Canada, and those assets shall, so far as they are available for discharging unsecured debts, be applied in discharging such debts due to creditors who are not enemies in priority to the unsecured debts due to creditors who are enemies; and any balance, after providing for the discharge of liabilities, shall be distributed amongst the persons interested therein in such manner as the Secretary of State may direct: *Provided*, That any sums or other property which, had a state of war not existed, would have been payable or transferable under this subsection to enemies, whether as creditors or otherwise, shall be paid or transferred to the Custodian, to be dealt with by him in like manner as money paid to him under these Orders and Regulations. [Br. 1916, sec. 1 (3).]

(5) Where there are assets of the business in enemy territory, the controller shall cause an estimate to be prepared of the value of those assets, and also of the liabilities of the business to creditors, whether secured or unsecured, in enemy territory, and of the claims of persons in enemy territory to participate in the distribution of any balance available for distribution, and such liabilities and claims shall, for the purposes of this order, be deemed to have been satisfied out of such assets so far as they are capable of bearing them, and the balance (if any) of such liabilities and claims shall alone rank for payment out of the other assets of the business. A certificate by the controller as to the amount of such assets, liabilities, claims, and balance shall be conclusive for the purposes of determining the sums available for discharging the other liabilities and for distribution amongst other persons claiming to be interested in the business: *Provided*, That nothing in this provision shall affect the rights of creditors of and other persons interested in the business against the assets of the business in enemy territory. (Br. 1916, sec. 4.)

(6) The Secretary of State may, on application for the purpose being made by a controller appointed under this order, after considering the application and any objection which may be made by any person who appears to him to be interested, grant him a release, and an order of the Secretary of State releasing the controller shall discharge him from all liability in respect of any act done or default made by him in the exercise and performance of his powers and duties as controller, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact. [Br. 1916, sec. 1 (5).]

(7) Where an order under subsection (1) of this order has been made as respects the business carried on by any person, firm, or company, no steps shall be taken for the enforcement of the rights of any creditors of the person, firm, or company, nor shall any petition for the winding-up of such company be presented, nor any resolution for the winding-up of such company be passed, without the consent of the Secretary of State, but the Secretary of State may present a petition for the winding-up of the company by the court, and the making of an order under this order shall be on a ground on which the company may be wound up by the court. [Br. 1916, sec. 1 (17).]

(8) The Secretary of State shall from time to time prepare and publish in the Canada Gazette lists of the persons as to whom orders have been made under this order, together with short particulars of such orders, and notice of the making of an order under this section prohibiting or limiting the carrying on of any business, or requiring any business to be wound up, shall likewise be published in the Canada Gazette. [Br. 1916, sec. 1 (8).]

(9) An order made under this order shall continue in force notwithstanding the termination of the present war until determined by order of the Secretary of State. [Br. 1916, sec. 1 (10).]

18. If any person contravenes the provisions of any order made under subsection (1) of order 17 hereof, he shall be guilty of an offense punishable and triable in like manner as the offense of trading with the enemy and such of these Orders and Regulations as relate to the trial and punishment of that offense shall apply accordingly. [Br. 1916, sec. 1 (6).]

19. Where it appears to the Secretary of State that a contract entered into, before, or during the war with an enemy or[1] enemy subject or with

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[1] The words "enemy or" do not appear in the King's Printer's copy in Proclamations and Orders of the Governor-General in Council, Ottawa, 1917, p. lxi. They are contained in the Canada Gazette of May 6, 1916.

a person, firm, or company in respect of whose business an order shall have been made under order 17 hereof is injurious to the public interest, the Secretary of State may by order cancel or determine such contract either unconditionally or upon such conditions as he may think fit, and thereupon such contract shall be deemed to be canceled or determined accordingly. (Br. 1916, sec. 2.)

20. The power of the Secretary of State to appoint inspectors and supervisors under orders 7, 8, and 12 hereof include a power to appoint an inspector or supervisor of the business carried on by any person, firm, or company within Canada for the purpose of ascertaining whether the business is carried on for the benefit of or under the control of enemy subjects, or for the purpose of ascertaining the relations existing, or which before the war existed, between such person, firm, or company, or any member of that firm or company, and any such subject; and the Secretary of State may require any inspector, supervisor, or controller appointed as aforesaid to furnish him with reports on any matters connected with the business. (Br. 1916, sec. 3.)

21. (1) Where on an application for the registration of a company it appears to any Registrar of Companies that any subscriber of the memorandum of association or any proposed director of the company is an enemy subject he may refuse to register the company. [Br. 1916, sec. 10 (1).]

(2) No allotment or transfer of any share, stock, debenture, or other security issued by a company made after the publication in the Canada Gazette of these Orders and Regulations to or for the benefit of an enemy subject shall, unless made with the consent of the Secretary of State, confer on the allottee or transferee any rights or remedies in respect thereof, and the company by whom the security was issued shall not take any cognizance of or otherwise act upon any notice of any such transfer except by leave of a court of competent jurisdiction or of the Secretary of State; and any company which contravenes any provision of this subsection shall be guilty of an offense against these Orders and Regulations. [Br. 1916, sec. 10 (2).]

22. Where the right of nominating or appointing a director of a company is vested in any enemy or enemy subject, the right shall not be exercisable except by leave of the Secretary of State, and any director nominated or appointed in exercise of such right shall, except as aforesaid, cease to hold office as director.

23. (1) The Minister of Finance and Receiver-General is hereby appointed to receive, hold, preserve, and deal with such property as may be paid to or vested in him in pursuance of these Orders and Regulations,

and he is herein referred to as "the Custodian." [Br. Cap. 12/14, s. 1 (1).]

(2) All moneys payable to the Custodian in pursuance of these Orders and Regulations shall be paid to the credit of the Custodian through such officers, banks, or persons and in such manner as the Custodian from time to time directs and appoints.

(3) The Custodian may place on deposit with any bank or invest in any securities approved by the Treasury Board any moneys paid to him or received by him from property vested in him pursuant to these Orders and Regulations, and any interest or dividends received on account of such deposits or investments shall be dealt with in such manner as the Treasury Board may direct. [Br. Cap. 12/14, s. (4).]

24. (1) Any sum which, had a state of war not existed, would have been payable and paid to or for the benefit of an enemy by way of dividends, interest, or share of profits shall be paid by the person, firm, or company by whom it would have been payable to the Custodian, to hold subject to the provisions of these and any future orders and regulations, and the payment shall be accompanied by such particulars as the Secretary of State may prescribe or the Custodian require. Any payment required to be made under this subsection to the Custodian shall be made—

(a) Within 14 days after the publication of these Orders and Regulations in the Canada Gazette, if the sum, had a state of war not existed, would have been paid before said publication; and

(b) In any other case within 14 days after it would have been paid. [Br. Cap. 12/14, s. 2 (1).]

And this section shall extend to sums which, had a state of war not existed, would have been payable and paid within Canada to enemies—

(a) In respect of interest on securities.

(b) By way of payment off of any securities which have become repayable on maturity or by being drawn for payment or otherwise. (Br. Cap. 79/15, s. 1 and sec. Interp. "securities.")

(2) Where before the publication of these Orders and Regulations in the Canada Gazette any such sum has been paid into any account with a bank or has been paid to any other person in trust for an enemy, the person, firm, or company by whom the payment was made shall, within 14 days after the publication of these Orders and Regulations as aforesaid, by notice in writing, require the bank or person to pay the sum over to the Custodian to hold as aforesaid and shall furnish the Custodian with such particulars as aforesaid. The bank or other person shall, within one week after the receipt of the notice, comply with the require-

ment and shall be exempt from all liability for having done so. [Br. Cap. 12/14, s. 2 (2).]

Provided that in the case of such sums as, had a state of war not existed, would have been payable and paid within Canada to enemies (other than sums in respect of the payment off of securities issued by a company) the duty of making payments to the Custodian and of requiring payments to be made to him and of furnishing him with particulars shall rest with the person, firm, or company through whom the payments within Canada are made. (Br. Cap. 79/15, s. 1.]

(3) Any such person who refuses or fails to make or require the making, as the case may be, of any payment or to furnish the prescribed particulars within the time mentioned in this order shall be guilty of an offense against these Orders and Regulations.

25. If, in the case of any person, firm, or company whose books and documents are liable to inspection under order 8 hereof any question arises as to the amount which would have been so payable and paid as provided in the last preceding order, the question shall be determined by the person who may have been or who may be appointed to inspect the books and documents of the person, firm, or company, or, on appeal, by the Secretary of State, and if in the course of determining the question, it appears to the inspector or the Secretary of State that the person, firm, or company has not distributed as dividends, interest, or profits the whole of the amount properly available for that purpose, the inspector or Secretary of State may ascertain what amount was so available and require the whole of such amount to be so distributed, and, in the case of a company, if such dividends have not been declared, the inspector or the Secretary of State may declare the appropriate dividends, and every such declaration shall be as effective as a declaration to the like effect duly made in accordance with the constitution of the company: *Provided*, That where a controller has been appointed under order 13 hereof, this section of this order shall apply as if for reference to the inspector there were substituted references to the controller. [Br. Cap. 12/14, s. 2 (4).]

26. (1) Any person who holds or manages for or on behalf of an enemy any property, real or personal (including any rights, whether legal or equitable, in or arising out of property, real or personal), shall, within one month after the publication in the Canada Gazette of these Orders and Regulations, or if the property comes into his possession or under his control after the said publication, then within one month after the time when it comes into his possession or under his control, by notice in writing communicate the fact to the Custodian, and shall furnish the Custodian

with such particulars in relation thereto as the Custodian may require. (Br. Cap. 12/14, s. 3.)

(2) The preceding subsection shall extend and apply to balances and deposits standing to the credit of enemies at any bank and to debts to the amount of $100 or upward which are due or which, had a state of war not existed, would have been due to enemies, as if such bank or debtor were a person who held property on behalf of an enemy. [Br. Cap. 79/15, s. 2 (1).]

(3) Every company incorporated by or under the authority of the Parliament of Canada or by or under the authority of the legislature of any of the Provinces of the Dominion of Canada, and every company which, though not incorporated by or under the authority of said Parliament or any of said legislatures, has a share transfer or share registration office in Canada, shall, within one month after the publication in the Canada Gazette of these Orders and Regulations, by notice in writing, communicate to the Custodian full particulars of shares, stock, debentures, and debenture stock and other obligations of the company which are held by or for the benefit of an enemy; and every partner of every firm, one or more partners of which on the commencement of the war became enemies or to which money had been lent for the purpose of the business of the firm by a person who so became an enemy, shall, within one month after publication aforesaid of these Orders and Regulations, by notice in writing, communicate to the Custodian full particulars as to any share of profits and interest due to such enemies or enemy. [Br. Cap. 79/15, s. 2 (2).]

(4) Any such person, bank, or company, if he or it refuses or fails to furnish the information and particulars within the time mentioned in this order, shall be guilty of an offense against these Orders and Regulations.

27. (1) Where the Custodian is satisfied from returns made to him under order 26 hereof that any securities are held by any person on behalf of an enemy, the Custodian may give notice thereof to the person, firm, or company by or through whom any dividends, interest, or bonus in respect of the securities or any sums by way of payment off of the securities are payable, and upon receipt of such notice any dividends, interest, or bonus payable in respect of, and any sums by way of payment off of the securities to which the notice relates shall be paid to the Custodian in like manner as if the securities were held by an enemy. [Br. Cap. 79/15, s. 1 (2).]

28. (1) Any superior court of record within Canada or any judge thereof, may, on the application of any person who appears to the court

or judge to be a creditor of an enemy or entitled to recover damages against an enemy, or to be interested in any property, real or personal (including any rights, whether legal or equitable, in or arising out of property, real or personal) belonging to or held or managed for or on behalf of an enemy, or on the application of the Custodian or any department of the Government of Canada, by order vest in the Custodian any such real or personal property as aforesaid, if the court or the judge is satisfied that such vesting is expedient for the purpose of these Orders and Regulations, and may by the order confer on the Custodian such powers of selling, managing, and otherwise dealing with property as to the court or judge may seem proper. (Br. Cap. 12/14, s. 4.)

(2) The court or judge, before making any order under this section, may direct that such notices (if any), whether by way of advertisement or otherwise, shall be given as the court or judge may think fit. [Br. Cap. 12/14, s. 4 (2).]

29. (1) It shall be the duty of every enemy subject who is within Canada, if so required by the Custodian, within one month after being so required, to furnish the Custodian with such particulars as to—

(a) Any stocks, shares, debentures, or other securities issued by any company, government, municipal, or other authority held by him or in which he is interested; and

(b) Any other property of the value of $200 or upward belonging to him, or in which he is interested, as the Custodian may require. (Br. 1916, sec. 5.)

(2) Any such person who refuses or fails to furnish such particulars within the time mentioned, if required, shall be guilty of an offense against these Orders and Regulations.

30. If the benefit of an application made by or on behalf or for the benefit of an enemy or enemy subject for any patent is, by an order under these Orders and Regulations vested in the Custodian, the patent may be granted to the Custodian as patentee and may, notwithstanding anything in any statute to the contrary, be sealed accordingly, and any patent so granted to the Custodian shall be deemed to be properly vested in him by such order as aforesaid. (Br. 1916, sec. 6.)

31. (1) Where in exercise of the powers conferred on him by the court under these Orders and Regulations, the Custodian proposes to sell any shares or stock forming part of the capital of any company or any securities issued by the company in respect of which a vesting order has been made, the company may, with the consent of the court, purchase the shares, stock, or securities, any law or any regulation of the company to the contrary notwithstanding, and any shares, stock, or

securities so purchased may from time to time be re-issued by the company. [Br. 1916, sec. 4 (3).]

(2) The transfer on sale by the Custodian of any property shall be conclusive evidence in favor of the purchaser and of the Custodian that the requirements of these Orders have been complied with. [Br. 1916, sec. 4 (4).]

32. (1) Where the Custodian executes a transfer of any shares, stock, or securities which he is empowered to transfer by a vesting order made under these Orders and Regulations, the company or other body in which books the shares, stock, or securities are registered shall, upon the receipt of the transfer so executed by the Custodian, and upon being required by him so to do, register the shares, stock, or securities in the name of the Custodian or other transferee, notwithstanding any regulation or stipulation of the company or other body, and notwithstanding that the Custodian is not in possession of the certificate, scrip, or other document of title relating to the shares, stock, or securities transferred, but such registration shall be without prejudice to any lien or charge in favor of the company or other body or to any other lien or charge of which the Custodian has notice.

(2) If any question arises as to the existence or amount of any lien or charge the question may, on application being made for the purpose, be determined by any superior court of record or a judgment thereof. (Br. 1916, sec. 8.)

33. Where a vesting order has been made under these orders and regulations as respects any property belonging to or held or managed for or on behalf of a person who appeared to the court making the order to be an enemy or enemy subject, the order shall not nor shall any proceedings thereunder or in consequence thereof be invalidated or affected by reason only of such person having prior to the date of the order, died or ceased to be an enemy or enemy subject or subsequently dying or ceasing to be an enemy or enemy subject, or by reason of its being subsequently ascertained that he was not an enemy or enemy subject as the case may be. (Br. 1916, sec. 9.)

34. Any restrictions imposed by statute or proclamation on dealings with enemy property shall continue to apply to property particulars whereof are or are liable to be notified to the Custodian in pursuance of these Orders and Regulations, not only during the continuance of the present war, but thereafter until such time as they may be removed by order in council, either simultaneously as respects all such property or at different times as respects different classes or items of property. (Br. 1916, sec. 7.)

35. (1) The Custodian shall, in addition to his other duties as defined by these Orders and Regulations, keep a record of:

(a) Debts, including bank balances, due to persons resident or being within Canada from persons residing or being in enemy countries.

(b) Other property in enemy countries, including securities, belonging to persons residing or being in Canada.

(2) Any person desiring to record such claims or property may obtain the necessary forms for that purpose from the Custodian, but the action of the Custodian will be confined to entering upon the record claims of which particulars are supplied to him, and it shall in no way commit the Government of Canada either to responsibility for the correctness of the claim entered or to taking any action on the conclusion of hostilities or otherwise for the recovery of the debtor property in question.

(3) The Custodian shall record claims against enemy governments in respect of public securities of these governments held by the claimants, but not any other claims against enemy governments, as distinct from claims against enemy subjects.

36. (1) The Custodian shall, subject to all other provisions of these Orders and Regulations, hold any money paid to and any property vested in him under authority of any of these Orders and Regulations until the termination of the present war, and shall thereafter deal with the same as the Governor-General in Council may by Order in Council direct. [Br. Cap. 12/14, sec. 5 (1); Br. 1916, sec. 4 (5).]

(2) The property held by the Custodian under these Orders and Regulations shall not be liable to be attached or otherwise taken in executions, but the Custodian may, upon an order of a superior court of record or a judge thereof, or of any court in which judgment has been recovered against an enemy, pay out of the property paid to him in respect of that enemy the whole or any part of any debts due by that enemy and specified in the order. [Br. Cap. 12/14, sec. 5 (2), and Br. 1916, sec. 12.]

Provided that before paying any such debt the Custodian shall take into consideration the sufficiency of the property paid to or vested in him in respect of the enemy in question to satisfy that debt and any other claims against the enemy of which notice verified by statutory declaration may have been served upon him. [Br. Cap. 12/14, sec. 5 (2).]

(3) The receipt of the Custodian or any person duly authorized to sign receipts on his behalf for any sum paid to him under these Orders and Regulations shall be a good discharge to the person paying the

same as against the person in respect of whom the sum was paid to the Custodian. [Br. Cap. 12/14, sec. 5 (3).]

(4) The Custodian shall keep a register of all property whereof returns have been made to him, or which is held by him, under these Orders and Regulations, and such register may be inspected by any person who appears to the Custodian to be interested as creditor or otherwise at all reasonable times free of charge. [Br. Cap. 12/14, sec. 5 (4); Br. Cap. 79/15, s. 2 (3).]

37. The Custodian shall have power to charge such fees in respect of his duties under these Orders and Regulations, whether by way of percentage or otherwise, as the Treasury Board may fix, and such fees shall be collected and accounted for by such persons in such manner and shall be paid to such account as the Treasury Board direct, and the incidence of the fees as between capital and income shall be determined by the Custodian. (Br. 1916, sec. 13.)

38. Anything authorized under these Orders and Regulations to be done by, to, or before the Secretary of State may be done by, to, or before any person authorized by him in that behalf, and all the functions of the Custodian thereunder may be performed as well by the Deputy Receiver-General and Deputy Minister of Finance; and for the effective operation of all the provisions of these Orders and Regulations the various Assistant Receivers-General throughout Canada shall perform, in addition to their ordinary duties, such services connected with the operating and enforcing of these Orders and Regulations as by the Custodian may be required of them from time to time. [Br. Cap. 87/14, s. 4 (5), and Br. 1916, sec. 14.]

39. (1) Nothing in these Orders and Regulations shall be construed as limiting the power of His Majesty by proclamation to prohibit any transaction which is not prohibited by these Orders and Regulations, or by license (granted directly or in pursuance of power delegated) to permit any transaction which is so prohibited. [Br. Cap. 12/14, s. 14 (4).]

(2) No person shall, for the purposes of these Orders and Regulations, be treated as an enemy who would not be so treated for the purpose of any proclamation issued by His Majesty or the Governor General of Canada dealing with trading with the enemy for the time being in force. [Br. Cap. 12/14, sec. 14 (2).]

40. The judges of the court to which any jurisdiction is by these orders committed may make provision by rules for the practice and procedure to be adopted for the purpose of the exercise of such jurisdiction. (Br. Cap. 12/14, sec. 5.)

41. No prosecution for an offense under orders 2, 3, 4, 17, or 18 of

the Orders and Regulations shall be instituted, except by or with the consent of the Attorney-General of Canada; provided that the person charged with any such an offense may be arrested and a warrant for his arrest may be issued and executed; and such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General of Canada to the institution of the prosecution for the offense has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained. [Br. Cap. 87/14, sec. 1 (4) and Can. P. C. 2724/1914.]

42. Where an act or default constitutes an offense both under these Orders and Regulations and under any statute, or both under these Orders and Regulations and at common law, the offender shall be liable to be prosecuted and punished under either these Orders and Regulations, or such statute, or at common law; but he shall not be liable to be punished twice for the same offense. [Br. Cap. 87/14, sec. 1 (5) and Can. P. C. 2724/1914.]

43. Subject to the provisions of order 41 hereof, any offense declared and any penalty or forfeiture imposed or authorized by these Orders and Regulations may in the absence of any provision for a different procedure be prosecuted, recovered, or enforced by summary proceedings and conviction under the provisions of Part XV of the Criminal Code. (Can. P. C. 2724/1914.)

44. Any person guilty of the offense of—

(a) Trading, attempting or directly or indirectly offering or proposing or agreeing to trade with the enemy in violation of orders 2, 3, or 4 hereof, or

(b) Contravening the provisions of any order made under order 17 hereof, shall be liable—

(a) On summary conviction to imprisonment with or without hard labor for a term not exceeding 12 months, or to a fine not exceeding $2,000, or to both such imprisonment and such fine, or

(b) On conviction on indictment to imprisonment for a term not exceeding five years or to a fine not exceeding $5,000, or to both such imprisonment and fine.

And the court may in any case order that any goods or money in respect of which the offense has been committed shall be forfeited. [Br. Cap. 87/14, s. 1 (3), Can. P. C. 2724/1914.]

45. Any person guilty of an offense mentioned in—

(a) Order 6, order 16, or order 21 hereof shall be liable to a fine not exceeding $500.

(b) Order 9 hereof shall be liable to imprisonment with or without hard labor for a term not exceeding six months or to a fine not exceeding $250, or to both such imprisonment and such fine.

(c) Order 24, order 26, order 27, or order 29 shall be liable to a fine not exceeding $500 or to imprisonment with or without hard labor for a term not exceeding six months, or to both such fine and such imprisonment, and, in addition, to a further fine not exceeding $250 for every day during which the default continues. [(a) Br. Cap. 12/14, s. 8, Br. 79/15, s. 3, Br. 12/14, s. 9 (1), Br. 1916, sec. 10 (2). (b) Br. Cap. 87/14, s. 2 (3), Br. Cap. 12/14, s. 12 (2). (c) Br. Cap. 12/14, s. 2 (3) and 3, Br. Cap. 79/15, s. 2 (2), Br. Cap. 79/12, s. 2 (2), Br. 1916, s. 5.]

46. Where a company, incorporated or unincorporated, or other body of persons, has been guilty of an offense or default under these Orders and Regulations, and the penalty or punishment provided as respects said offense or default is or includes a fine and whether or not imprisonment, additionally or alternatively, the company or other body shall be liable to the fine only (with any additional fine or fines provided by any of these Orders and Regulations with respect to continuing defaults, and every director, manager, secretary, or other officer of such company or body of persons and every partner or member of such unincorporated company or body of persons, who is knowingly a party to the offense or default, shall also be deemed guilty of the offense or default and liable on conviction to the like fine or fines as the company or other body of persons or to imprisonment, with or without hard labor, for a term not exceeding six months, or to both such fine or fines and such imprisonment. [Br. Cap. 87/14, s. 1 (3), Can. P. C. 2724/1914. Br. Cap. 12/14, s. (8), Br. Cap. 79/15, s. (3).]

47. These Orders and Regulations may be cited as the "Consolidated Orders respecting Trading with the Enemy, 1916."

48. The Order in Council of October 30, 1914 (No. 2724), is hereby, as from the date hereof, revoked, and from and after the date hereof, these present Orders and Regulations are substituted therefor.

III. Commonwealth of Australia

TRADING WITH THE ENEMY ACT, 1914–1916

Being the Trading with the Enemy Act (No. 9 of 1914), as amended by the Trading with the Enemy Act (No. 2) 1914, No. 17 of 1914 and by the Trading with the Enemy Act, 1916 (No. 20 of 1916)

AN ACT RELATING TO TRADING WITH THE ENEMY. (OCTOBER 23, 1914; NOVEMBER 26, 1914; MAY 30, 1916)

1. This Act may be cited as the Trading with the Enemy Act, 1914.

2. (1) In this Act, unless the contrary intention appears—

"The Comptroller-General" means the Comptroller-General of Customs:

"The present state of war" means the period from the fourth day of August One thousand nine hundred and fourteen, at the hour of eleven o'clock post meridian reckoned according to Greenwich standard time, until the issue of a Proclamation by the Governor-General that the war between His Majesty the King and the German Emperor and between His Majesty the King and the Emperor of Austria King of Hungary has ceased.

"Enemy subject" means—

(a) any person or firm with whom trading is prohibited by or under any proclamation referred to in subsection (2) of this section; or

(b) any company, whether incorporated in any enemy country or not, which the Attorney-General, by notice published in the Gazette, declares to be in his opinion managed or controlled, directly or indirectly, by or under the influence of, or carried on wholly or mainly for the benefit or on behalf of, persons of enemy nationality, or resident or carrying on business in an enemy country.

"Dividends, interest or share of profits" means any dividends, bonus, or interest in respect of any shares, stock, debentures, debenture stock or other obligations of any company, any interest in respect of any loan to a firm or person carrying on business for the purposes of that business and any profits or share of profits of such a business:

"Public Trustee" means the Public Trustee appointed by the Governor-General under this Act.

(2) For the purposes of this Act a person shall be deemed to trade with the enemy if he performs or takes part in—

(a) any act or transaction which is prohibited by or under any proclamation issued by the King and published in the Gazette, whether before or after the commencement of this Act,

(b) any act or transaction which is prohibited by or under any proclamation made by the Governor-General and published in the Gazette, or

(c) any act or transaction which at common law or by statute constitutes trading with the enemy.

2a. (1) For the purposes of this Act, the Governor-General may appoint a person to act as custodian of enemy property, and that person is in this Act referred to as the Public Trustee.

(2) The Public Trustee shall be charged with the duty of receiving, holding, preserving, and dealing with such property as is paid to or vested in him in pursuance of this Act.

(3) The Public Trustee shall be a corporation sole under that name with perpetual succession and an official seal, and shall be capable of suing and being sued.

(4) The accounts of the Public Trustee shall be subject to audit by the Auditor-General.

(5) The Public Trustee shall have such powers and duties with respect to the property specified in subsection (2) of this section as are prescribed.

(6) The Public Trustee may place on deposit with any bank, or invest in any securities, approved by the Treasurer, any moneys paid to him under this Act, or received by him from property vested in him under this Act.

(7) The Public Trustee shall deal in such manner as the Treasurer directs with any interest or dividends received on account of such deposits or investments.

2b. (1) The Public Trustee may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand delegate all or any of his powers and functions under this Act (except this power of delegation) so that the delegated powers and functions may be exercised by the delegate with respect to the matters or class of matters, or the State or part of the Commonwealth, specified in the instrument of delegation.

(2) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power by the Public Trustee.

3. (1) Any person who, during the continuance of the present state

of war, trades, or attempts, or directly or indirectly offers or proposes or agrees, to trade, or has before the commencement of this Act traded, or attempted, or directly or indirectly offered or proposed or agreed, to trade, with the enemy shall be guilty of an offence.

(1a) If any person without lawful authority deals, or attempts, or offers, proposes or agrees, whether directly or indirectly, to deal with any money or security for money or other property which is in his hands or over which he has any claim or control for the purpose of enabling an enemy subject to obtain money or credit thereon or thereby, he shall be deemed to be guilty of the offence of trading with the enemy within the meaning of this Act.

(2) An offence against this section may be prosecuted either summarily or upon indictment, but an offender shall not be liable to be punished more than once in respect of the same offence.

(3) The punishment for an offence against this section shall be as follows:—

(a) If the offence is prosecuted summarily—a fine not exceeding five hundred pounds, or imprisonment for any term not exceeding twelve months, or both;

(b) If the offence is prosecuted upon indictment—a fine of any amount, or imprisonment for not more than seven years, or both.

(4) Any goods or money in relation to which an offence against this section has been committed or which has been used in connexion with such an offence shall be forfeited to the King, and may be seized by any officer of police or person thereto authorized in writing by the Comptroller-General.

(5) A corporation guilty of an offence against this section shall be liable to the pecuniary penalties thereby provided, and any director, officer, servant, or agent of a corporation who is knowingly concerned in the commission of an offence against this section by the corporation shall be deemed to be guilty of the offence and punishable accordingly by fine or imprisonment or both.

(6) A prosecution for an offence against this section shall not be instituted without the written consent of the Attorney-General.

4. (1) Where it appears to a justice of the peace that an offence has been, or is likely to be, committed by any person, firm, or company against the last preceding section, or that it is desirable for the purposes of this Act to inspect the books and documents of any person, firm, or company, he may, upon information on oath made by the Comptroller-General or a person thereto authorized by him, by warrant authorize any person named in the warrant—

(a) to inspect, and if thought fit impound, any books or documents belonging to or in the possession or control of the person, firm, or company; and

(b) to require any person whom the Comptroller-General believes to be able to give information or produce books or documents respecting the business or trade of the person, firm, or company to give such information or produce such books or documents; and

(c) if accompanied by an officer of police or prescribed officer, to enter into, break open, and search any house, premises or place used or believed by the Comptroller-General to be used in connexion with such business or trade or in which the Comptroller-General believes there are any books or documents belonging to the person, firm, or company.

(2) Where the Comptroller-General certifies in writing that in relation to any person, firm, or company it is desirable on account of urgency that any or all of the powers contained in paragraphs (a), (b) and (c) of subsection (1) of this section should be exercised without prior application to a justice of the peace for the issue of a warrant, the Comptroller-General may by writing under his hand authorize any person named in the writing to exercise all or any of the powers contained in the said paragraphs.

(3) Any person who obstructs or interferes with any person authorized under subsection (1) or subsection (2) of this section in the exercise of any power conferred upon him in pursuance of this section, or who refuses or fails to produce any book or document or to give any information when required to do so in pursuance of this section, shall be guilty of an offence.

Penalty: Five hundred pounds or imprisonment for one year, or both.

(4) Where a person has given any information to a person authorized under this section to inspect the books and documents belonging to or in the possession or control of any person, firm or company, the information so given may be used in evidence against him in any proceedings relating to offences of trading with the enemy within the meaning of this Act, notwithstanding that he only gave the information on being required to do so by the authorized person in pursuance of his powers under this section.

(5) Where, on the report of any person authorized to inspect the books and documents of a person, firm, or company under section four of this Act, it appears to the Minister for Trade and Customs that it is expedient that the business should be subject to frequent inspection or constant supervision, the Minister may appoint a person to supervise the business with such powers as the Minister may determine, and any remuneration payable and expenses incurred, whether for the original inspection or

the subsequent supervision to such amount as may be fixed by the Minister, shall be paid by the said person, firm or company.

5. No person shall in any proceeding for an offence against this Act be excused from answering any question or producing any book or document on the ground that the answer or production may criminate or tend to criminate him, but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury or proceedings under this Act.

6. Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in or privy to—

(a) the commission of any offence against this Act; or

(b) the doing of any act outside Australia which would, if done within Australia, be an offence against this Act,

shall be deemed to have committed the offence and shall be punishable accordingly.

7. For the purposes of this Act evidence of any proclamation issued by the King or by the Governor-General may be given in all courts by the production of the Gazette purporting to contain it.

8. (1) Where it appears to the Minister for Trade and Customs in reference to any person, firm or company—

(a) that an offence under section three of this Act has been or is likely to be committed in connexion with the trade or business thereof, or

(b) that (in the case of a firm or company) the control or management thereof has been or is likely to be so affected by the state of war as to prejudice the effective continuance of its trade or business, and that it is in the public interest that the trade or business should continue to be carried on,

(c) that the business thereof is controlled or managed directly or indirectly by or under the influence of enemy subjects, or is carried on wholly or mainly for the benefit or on behalf of enemy subjects; or

(d) that it is necessary for the safety of the Commonwealth that a controller of the business should be appointed; or

(e) that it is expedient in the public interest that a controller should be appointed owing to circumstances or considerations arising out of the present war;

the Minister may apply to the High Court for the appointment of a controller of the person, firm, or company, and the High Court shall have power to appoint such a controller for such time and with such powers and subject to such conditions as the Court thinks fit, and the powers so conferred may include any powers of controlling, conducting, continuing, discontinuing, extending, restricting, or varying the business and operations of the person, firm, or company including (if the Court considers it necessary or expedient for the purpose of enabling the controller to borrow money) the power, upon special application made to the Court for that purpose, to create charges on the property of the firm or company in priority to existing charges.

(2) The Court shall have power to direct how and by whom the costs of any proceedings under this section, and the remuneration charges and expenses of the controller, shall be borne, and shall have power, if it thinks fit, to charge such costs, charges, and expenses on the property of the firm or company in such order of priority in relation to any existing charges thereon as it thinks fit.

(3) Where the Minister is satisfied in reference to any person, firm, or company, that the business thereof is managed, controlled or carried on as mentioned in paragraph (c) of subsection (1) of this section, or that it is necessary for the safety of the Commonwealth that a controller of the business should be appointed, he may, before applying to the High Court under that subsection appoint an interim controller of the person, firm, or company with such powers and subject to such conditions as he thinks fit; but in that case he shall as soon as practicable thereafter apply to the High Court under that subsection.

9. (1) Where any person has reasonable ground for believing that any person, firm, or company to whom he owes money is an enemy subject he may tender the money to the Comptroller-General, or to any officer of Customs authorized in that behalf by the Comptroller-General, together with a statutory declaration stating the transaction or matter in respect of which he owes the money, and his grounds for believing that the creditor is an enemy subject.

(2) The Comptroller-General or officer shall, if he is satisfied that the grounds of belief stated in the declaration are reasonable, receive the money, and give a receipt therefor stating the name of the creditor on whose account the money is paid.

(3) The receipt shall be a good and valid discharge to the debtor as against the creditor and all persons claiming through or on behalf of the creditor.

(4) The Comptroller-General or officer shall pay the money into a Trust Account to be established for that purpose by the Treasurer under the Audit Act, 1901-1912.

(5) Any money paid to a Trust Account in pursuance of this section may, at the discretion of the Treasurer—

(a) be paid to the Public Trustee as money vested in him under this Act; or

(b) be paid to any special account opened by the creditor in accordance with any license granted by the Attorney-General under any proclamation by the Governor-General relating to trading with the enemy; or

(c) be paid to the creditor, his executors or administrators, on demand made after the termination of the present state of war, or before that time if he is satisfied that the creditor is not an enemy subject.

9a. (1) Any sum which, had a state of war not existed, would have been payable and paid to or for the benefit of an enemy subject by way of dividends, interest or share of profits, or would have been payable and paid in Australia to any enemy subject—

(a) in respect of interest on securities issued by or on behalf of the Government of the Commonwealth or of any State or of any other part of the British Dominions, or of any foreign Government, or by or on behalf of any corporation or any municipal or other authority whether within or without the Commonwealth; and

(b) by way of payment off of any securities which have become repayable on maturity or by being drawn for payment or otherwise, being such securities as aforesaid or securities issued by any company,

shall be paid to the Public Trustee, to hold subject to the provisions of this Act and the Regulations.

(2) In the case of dividends, interest or share of profits, the payment shall be made by the person, firm or company by whom it would have been payable; and in the case of sums in respect of the payment off of securities issued by a company, the payment shall be made by the company by which they would have been payable; and in the case of all other sums comprised in paragraph (a) or (b) of subsection (1) of this section, the payment shall be made by the person, firm or company through whom or which the payments in Australia are made.

(3) The payment shall be accompanied by such particulars as are prescribed, or as the Public Trustee requires.

(4) Any payment required to be made under this section to the Public Trustee shall be made—

(a) within fourteen days after the commencement of this section, if the sum, had a state of war not existed, would have been paid before the commencement of this section; and

(b) in any other case, within fourteen days after it would have been paid.

(5) Where before the commencement of this section any such sum has been paid into any account with a bank, or has been paid to any other person in trust for an enemy, the person, firm or company by whom the payment was made shall, within fourteen days after the commencement of this section, by notice in writing require the bank or person to pay the sum over to the Public Trustee to hold as aforesaid, and shall furnish the Public Trustee with such particulars as aforesaid.

(6) The bank or other person shall, within one week after the receipt of the notice, comply with the requirement and shall be exempt from all liability for having done so.

(7) If any person fails to make, or require the making of, any payment, or to furnish the prescribed or required particulars, within the time mentioned in this section, he shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for six months, or both; and in addition a further penalty not exceeding Fifty pounds for every day during which the default continues.

(8) Every director, manager, secretary or officer of a company, or any other person who is knowingly a party to the default, shall likewise be guilty of an offence and be liable to the like penalty.

(9) If, in the case of any person, firm or company, any question arises as to the amount which would have been so payable and paid as aforesaid, the question shall be determined by any person who has been or may be authorized to inspect the books and documents of the person, firm or company, or, on appeal, by the Public Trustee, and if, in the course of determining the question, it appears to that authorized person or the Public Trustee that the person, firm or company has not distributed as dividends, interest or profits the whole of the amount properly available for that purpose, the authorized person or the Public Trustee, as the case may be, may ascertain what amount was so available and require the whole of such amount to be so distributed, and, in the case of a company, if such dividends have not been declared, the authorized person or the Public Trustee may himself declare the appropriate dividends, and every such declaration shall be as effective as a declaration to the like effect duly made in accordance with the constitution of the company:

Provided that where a controller has been appointed under section eight of this Act this subsection shall apply as if for references to an authorized person there were substituted references to the controller.

(10) Where a person is carrying on any business on behalf of an enemy subject, any sum which, had a state of war not existed, would have been

transmissible by a person to the enemy subject by way of profits from that business shall be deemed to be a sum which would have been payable and paid to that enemy subject.

(11) For the purposes of this section, the word "securities" includes stock, shares, annuities, bonds, debentures or debenture stock or other obligations.

9b. (1) Any person or company who holds or manages for or on behalf of an enemy subject any property, real or personal (including—

(a) any rights, whether legal or equitable, in or arising out of property, real or personal; or

(b) any balances or deposits standing to the credit of an enemy subject at any bank; or

(c) any debt to the amount of Fifty pounds or upwards which is due, or which, had a state of war not existed, would have been due, to an enemy subject),

shall, within one month after the commencement of this section, or if the property comes into his possession or under his control after the commencement of this section, then within one month after the time when it comes into his possession or under his control, by notice in writing communicate the fact to the Public Trustee, and shall furnish the Public Trustee with such particulars in relation thereto as the Public Trustee requires.

(2) In the case of—

(a) any balances or deposits standing to the credit of an enemy subject at a bank; and

(b) any such debt as is specified in paragraph (c) of the last preceding subsection,

the bank or debtor, as the case may be, shall, for the purposes of that subsection, be deemed to be a company or person holding or managing property for or on behalf of an enemy subject.

(3) If any person fails to comply with the provisions of subsection (1) of this section he shall be guilty of an offence, and be liable to a penalty not exceeding One hundred pounds or imprisonment for a term not exceeding six months, or to both such penalty and imprisonment, and in addition to a further penalty not exceeding Fifty pounds for every day during which the default continues.

(4) If any company fails to comply with the provisions of subsection (1) of this section, the company, and every director, manager, secretary, or officer of the company who is knowingly a party to the default shall be guilty of an offence, and shall be liable to the following punishment:

(a) the company—to a penalty not exceeding One hundred pounds, and, in addition, to a further penalty not exceeding Fifty pounds for every day during which the default continues; and

(b) the director, manager, secretary or officer who is knowingly a party to the default—to a penalty not exceeding One hundred pounds, or imprisonment for a term not exceeding six months, or both; and, in addition, to a further penalty not exceeding Fifty pounds for every day during which the default continues.

(5) Every company which is incorporated in any part of Australia, or which, though not incorporated in any part of Australia, has a share transfer or share registration office in Australia, shall, within one month after the commencement of this section, by notice in writing communicate to the Public Trustee full particulars of all shares, stock, debentures and debenture stock and other obligations of the company which are held by or for the benefit of an enemy subject:

Provided that where any company has for the purposes of any Regulations under the War Precautions Act 1914–1915 communicated to the Attorney-General, full particulars of all shares of the company which are held by or for the benefit of an enemy subject, the company shall not be required to communicate to the Public Trustee particulars of such shares, unless the Public Trustee by notice in writing served upon the company requires it so to do.

(6) Every partner of every firm—

(a) which is an enemy subject; or

(b) one or more partners of which on the commencement of the war became enemy subjects; or

(c) to which money had been lent for the purpose of the business of the firm by a person who so became an enemy subject,

shall, within one month after the commencement of this section, by notice in writing communicate to the Public Trustee full particulars as to any share of profits and interest due to such enemy subjects or subject.

(7) If any company or partner fails to comply with the provisions of subsection (5) or (6) of this section—

(a) the company shall be guilty of an offence and be liable to a penalty not exceeding One hundred pounds, and in addition, to a further penalty not exceeding Fifty pounds for every day during which the default continues; and

(b) the partner, and every director, manager, secretary or officer of the company who is knowingly a party to the default, shall likewise be guilty of an offence and be liable to the like penalty or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

(8) Where the Public Trustee is satisfied from returns made to him under this section that any such securities as are specified in subsection (1) of section nine A of this Act (including securities issued by a company) are held by any person on behalf of an enemy subject, the Public Trustee may give notice thereof to the person, firm or company by or through whom any dividends, interest or bonus in respect of the securities or any sums by way of payment off of the securities are payable, and upon the receipt of the notice any dividends, interest or bonus payable in respect of, and any sums by way of payment off of, the securities to which the notice relates shall be paid to the Public Trustee in like manner as if the securities were held by an enemy subject.

(9) The Public Trustee shall keep a register of all property, returns of which have been made to him under this section, and any person who appears to the Public Trustee to be interested as a creditor or otherwise may inspect the register.

9c. (1) The High Court or a Justice thereof may, on the application of any person who appears to the Court—

(a) to be a creditor of an enemy subject, or

(b) to be entitled to recover damages against an enemy subject, or

(c) to be interested in any property, real or personal (including any rights, whether legal or equitable, in or arising out of property, real or personal), belonging to, or held or managed for or on behalf of, an enemy subject,

or on the application of the Public Trustee or any Minister of State, by order vest in the Public Trustee any such real or personal property as aforesaid, if the Court or the Justice is satisfied that such vesting is expedient for the purposes of this Act, and may by the order confer on the Public Trustee such powers of selling, managing and otherwise dealing with the property as to the Court or Justice may seem proper.

(2) The Court or Justice, before making any order under this section, may direct that such notices (if any) whether by way of advertisement or otherwise, shall be given as the Court or Justice thinks fit.

(3) A vesting order under this section as respects property of any description in any State or part of the Commonwealth shall be of the like purport and effect as a vesting order as respects property of the same description made in that State or part under the law of that State or part relating to trustees.

9d. (1) The Public Trustee shall, except so far as a Minister of State or the High Court or a Justice thereof otherwise directs, and subject to the provisions of the next succeeding subsection, hold any money paid to, and any property vested in, him under this Act until the termination of the present war, and shall thereafter deal with the same in such manner as the Governor-General directs.

(2) The property held by the Public Trustee under this Act shall not be liable to be attached or otherwise taken in execution, but the Public Trustee may, if so authorized by an order of the High Court or a Justice thereof, pay out of the property paid to him in respect of that enemy subject the whole or any part of any debts due by that enemy subject and specified in the order:

Provided that before paying any such debt the Public Trustee shall take into consideration the sufficiency of the property paid to or vested in him in respect of the enemy subject in question to satisfy that debt and any other claims against that enemy subject of which notice verified by statutory declaration may have been served upon him.

(3) The receipt of the Public Trustee, or any person duly authorized to sign receipts on his behalf, for any sum paid to him under this Act shall be a good discharge to the person paying the same as against the person or body of persons in respect of whom the sum was paid to the Public Trustee.

(4) The Public Trustee shall keep a register of all property held by him under this Act, which register shall be open to public inspection at all reasonable times free of charge.

9e. The Justices of the High Court, or a majority of them, may make Rules of Court for regulating the practice and procedure to be adopted for the purpose of the last two preceding sections.

9f. (1) No person shall by virtue of any assignment of any debt or other chose in action, or delivery of any coupon or other security transferable by delivery, or transfer of any other obligation made or to be made in his favour by or on behalf of an enemy subject, whether for valuable consideration or otherwise, have any rights or remedies against the person liable to pay, discharge or satisfy the debt, chose in action, security or obligation, unless he proves that the assignment, delivery, or transfer was made before the ninth day of May One thousand nine hundred and sixteen; and any person who knowingly pays, discharges or satisfies any debt, or chose in action, to which this subsection applies, shall be guilty of the offence of trading with the enemy:

Provided that this subsection shall not apply to any bill of exchange or promissory note.

(2) No person shall by virtue of any transfer of a bill of exchange or promissory note made or to be made in his favour by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights

or remedies against any party to the instrument unless he proves that the transfer was made—

(a) before the commencement of the present war, or

(b) before the ninth day of May, One thousand nine hundred and sixteen in good faith and for valuable consideration;

and any party to the instrument who knowingly discharges the instrument shall be guilty of trading with the enemy.

(3) Nothing in this section shall be construed as validating any assignment, delivery or transfer which would be invalid apart from this section or as applying to securities within the meaning of section 9 (g) of this Act.

9g. (1) No transfer made after the passing of this section by or on behalf of an enemy subject of any securities shall confer on the transferee any rights or remedies in respect thereof and no company or municipal authority or other body by whom the securities were issued or are managed shall, except as hereinafter appears, take any cognizance of or otherwise act upon any notice of such a transfer.

(2) No entry shall hereafter, during the continuance of the present war, be made in any register or branch register or other book kept in Australia of any transfer of any securities therein registered, inscribed or standing in the name of an enemy subject, except by leave of the Public Trustee.

(3) No share warrants payable to bearer shall be issued during the continuance of the present war in respect of any shares or stock registered in the name of any enemy subject.

(4) If any company or any body contravenes the provisions of this section the company or body shall be guilty of an offence and be liable to a penalty not exceeding One hundred pounds, and every director, manager, secretary or other officer of the company or body who is knowingly a party to the default, shall likewise be guilty of an offence and be liable to the like penalty or to imprisonment for a term not exceeding six months.

(5) For the purposes of this section the expression "securities" means any annuities, stock, shares, debentures, or debenture stock issued by or on behalf of the Government of the Commonwealth or a State, or by any municipal or other authority, or by any company or by any other body, which are registered or inscribed in any register, branch register, or other book kept in Australia.

9h. (1) Where it appears to the Minister for Trade and Customs that the business carried on in Australia by any person, firm, or company is, by reason of the enemy nationality or enemy association of that person, firm, or company, or of the members of that firm or company or any of them, or otherwise, carried on wholly or mainly for the benefit of or under the control of enemy subjects, the Minister may, if he thinks fit, make an order requiring the business to be wound up.

(2) The Minister may at any time revoke or vary any such order.

(3) Where the Minister makes any such order he may at the same time or at any time subsequently appoint a controller to conduct the winding-up of the business, and in any case where it appears expedient to the Minister, he may, as occasion requires, confer on the controller such powers as are exercisable by a liquidator in a voluntary winding-up of a company (including power in the name of the person, firm, or company, or in his own name, and by deed or otherwise, to convey or transfer any property, and power to apply to the High Court or a Justice thereof to determine any question arising in the carrying out of the order), or those powers subject to such modifications, restrictions or extensions as the Minister thinks necessary or convenient for the purpose of giving full effect to the order, and the remuneration of and costs, charges and expenses incurred by the controller, to such amount as may be approved by the Minister, shall be defrayed out of the assets of the business, and shall be charged on such assets in priority to any other charges thereon.

(4) The distribution of any sums or other property resulting from the realization of any assets of the business, shall be subject to the same rules as to preferential payments as are applicable to the distribution of the assets of a company which is being wound up, and those assets shall, so far as they are available for discharging unsecured debts, be applied in discharging such debts due to creditors who are not enemy subjects in priority to the unsecured debts due to creditors who are enemy subjects; and any balance, after providing for the discharge of liabilities, shall be distributed amongst the persons interested therein in such manner as the Minister directs:

Provided that any sums or other property which had a state of war not existed would have been payable or transferable under this section to enemy subjects, whether as creditors or otherwise, shall be paid or transferred to the Public Trustee to be dealt with by him in like manner as money paid to him under section nine of this Act.

(5) Where there are assets of the business in enemy territory, the controller shall cause an estimate to be prepared of the value of those assets and also of the liabilities of the business to creditors, whether secured or unsecured, in enemy territory, and of the claims of persons in enemy territory to participate in the distribution of any balance available for distribution, and such liabilities and claims shall, for the purposes of this

section, be deemed to have been satisfied out of such assets so far as they are capable of bearing them, and the balance (if any) of such liabilities and claims shall alone rank for payment out of the other assets of the business. A certificate by the controller as to the amount of such assets, liabilities, claims and balance shall be conclusive for the purpose of determining the sums available for discharging the other liabilities and for distribution amongst other persons claiming to be interested in the business:

Provided that nothing in this provision shall affect the rights of creditors of and other persons interested in the business against the assets of the business in enemy territory.

(6) The Minister may, on application for the purpose being made by a controller appointed under this section, after considering the application and any objection which may be made by any person who appears to him to be interested, grant him a release, and an order of the Minister releasing the controller shall discharge him from all liability in respect of any act done or default made by him in the exercise and performance of his powers and duties as controller, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(7) If any person contravenes the provisions of any order made under this section he shall be guilty of an offence, and liable to the same punishment as if he had been guilty of trading with the enemy.

(8) Where an order under this section has been made as respects the business carried on by any person, firm, or company, no bankruptcy petition or petition for sequestration or summary sequestration against such person or firm, or petition for the winding-up of such company, shall be presented, or resolution for the winding-up of such company, shall be presented, or resolution for the winding-up of such company passed, or steps for the enforcement of the rights of any creditors of the person, firm, or company taken, without the consent of the Minister, but the Minister may present a petition for the winding-up of the company by the High Court, and the making of an order under this section shall be a ground on which the company may be wound up by the High Court.

(9) The Minister may from time to time prepare and lay before Parliament lists of the persons, firms, and companies as to whom orders have been made under this section, together with short particulars of such orders, and notice of the making of an order under this section requiring any business to be wound up, shall be published in the Gazette.

(10) Where a person, being a subject of His Majesty or of any State allied to His Majesty, is detained in enemy territory against his will,

that person for the purposes of this section shall not be treated as an enemy subject or as being in enemy territory.

(11) An order made under this section shall continue in force notwithstanding the termination of the present war until determined by order of the Minister.

9i. (1) The Minister in any case where it appears to him to be expedient to do so, may by order vest in the Public Trustee any property, real or personal (including any rights whether legal or equitable, in or arising out of property, real or personal), belonging to or held or managed for or on behalf of an enemy subject, or the right to transfer that property, and may by any such order, or any subsequent order, confer on the Public Trustee such powers of selling, managing, and otherwise dealing with the property as to the Minister seems proper.

(2) A vesting order under this section as respects property of any description in any State or part of the Commonwealth shall be of the like purport and effect as a vesting order as respects property of the same description made in that State or part under the law relating to trustees, and shall be sufficient to vest in the Public Trustee any property, or the right to transfer any property as provided by the order, without the necessity of any further conveyance, assurance, or document.

(3) Where in exercise of the powers conferred on him under or by virtue of this Act, the Public Trustee proposes to sell any shares or stock forming part of the capital of any company or any securities issued by the company in respect of which a vesting order has been made under this Act, the company may, with the consent of the Minister, purchase the shares, stock, or securities, any law or any regulation of the company to the contrary notwithstanding, and any shares, stock, or securities so purchased may from time to time be re-issued by the company.

(4) The transfer on sale by the Public Trustee of any property shall be conclusive evidence in favour of the purchaser and of the Public Trustee that the requirements of this section have been complied with.

(5) All property vested in the Public Trustee under this section, and the proceeds of the sale of, or money arising from, any such property shall be dealt with by him in like manner as money paid to and property vested in him under other provisions of this Act.

9j. It shall be the duty of every enemy subject who is within Australia, if so required by the Public Trustee within one month after being so required, to furnish the Public Trustee with such particulars as to—

(a) any stocks, shares, debentures, or other securities issued by any company, government, municipal or other authority held by him or in which he is interested; and

(b) any other property of the value of Fifty pounds or upwards belonging to him or in which he is interested

as the Public Trustee may require, and if he fails to do so he shall be guilty of an offence, and be liable to a penalty not exceeding One hundred pounds, or imprisonment for six months, or both; and, in addition, to a further penalty not exceeding Fifty pounds for every day during which the default continues.

9k. If the benefit of an application made by or on behalf or for the benefit of an enemy subject for any patent is, by an order under this Act, vested in the Public Trustee, the patent may be granted to the Public Trustee as patentee and may, notwithstanding anything in section sixty-six of the Patents Act 1903-1909, be sealed accordingly by the Commissioner of Patents, and any patent so granted to the Public Trustee shall be deemed to be property vested in him by such order as aforesaid.

9l. (1) Any restrictions imposed by any Act, Regulations or Proclamation on dealings with enemy property shall continue to apply to property particulars whereof are or are liable to be notified to the Public Trustee in pursuance of this Act, not only during the continuance of the present war, but thereafter until such time as they are removed by the Governor-General.

(2) The Governor-General may by order remove all or any of those restrictions either simultaneously as respects all such property or at different times as respects different classes or items of property.

9m. (1) Where the Public Trustee executes a transfer of any shares, stock, or securities which he is empowered to transfer by a vesting order made under this Act, the company or other body in whose books the shares, stock, or securities are registered shall, upon the receipt of the transfer so executed by the Public Trustee, and upon being required by him so to do, register the shares, stock, or securities in the name of the Public Trustee or other transferee, notwithstanding any regulation or stipulation of the company or other body, and notwithstanding that the Public Trustee is not in possession of the certificate, scrip, or other document of title relating to the shares, stock, or securities transferred, but such registration shall be without prejudice to any lien or charge in favour of the company or other body or to any other lien or charge of which the Public Trustee has notice.

(2) If any question arises as to the existence or amount of any lien or charge the question may, on application being made for the purpose, be determined by the High Court or a Justice thereof.

9n. Where a vesting order has been made under this Act as respects any property belonging to or held or managed for or on behalf of a person who appeared to the Court or the Minister, as the case may be, to be an enemy subject, the order shall not nor shall any proceedings thereunder or in consequence thereof be invalidated or affected by reason only of such person having, prior to the date of the order, died or ceased to be an enemy subject or subsequently dying or ceasing to be an enemy subject, or by reason of its being subsequently ascertained that he was not an enemy subject, as the case may be.

9p. Where the Minister certifies that it appears to him that a company registered in Australia is carrying on business either directly or through an agent, branch, or subsidiary company outside Australia, and that in carrying on such business it has entered into or done acts which if entered into or done in Australia would constitute the offence of trading with the enemy, the Minister may present a petition for the winding-up of the company by the High Court, and the issue of such a certificate shall be a ground on which the company may be wound-up by the High Court, and the certificate shall, for the purposes of the petition, be evidence of the facts therein stated.

9q. There shall be charged in respect of the duties of the Public Trustee such fees, whether by way of percentage or otherwise, as are prescribed, and the incidence of the fees as between capital and income shall be determined by the Public Trustee.

9r. Notwithstanding anything contained in this Act, the Governor-General or a Minister of State may by licence under his hand, exempt any particular transaction or class of transactions from the provisions of this Act.

9s. (1) The Governor-General may arrange with the Governor-in-Council of any State, the Parliament of which has passed legislation in relation to the custody of property of alien enemies during the present war, for—

(a) the transfer by the Custodian of enemy property or Public Trustee under the State Act (in this Act referred to as "the Custodian") to the Public Trustee, of all money and other property whatsoever received by the Custodian under the State Act, and of all returns, particulars, notifications, books and documents received by the Custodian under, or kept by him for the purposes of, the State Act; and

(b) all matters necessary or desirable for carrying out or giving effect to the transfer.

(2) Upon the notification in the Gazette of the making of any such arrangement with the Governor in Council of any State—

(a) all property vested in the Custodian under the State Act shall by force of this Act be vested in the Public Trustee as though it were vested in him under this Act; and

(b) any sum of money which under a State Act has been paid into the Supreme Court of the State shall be transferred to and paid into the High Court as though it were money which under this Act has been paid into the High Court.

(3) Subject to the last two preceding subsections this section shall not, nor shall the making of any arrangement under this section affect any right, obligation, privilege or liability acquired, accrued or incurred under any State Act.

10. The Governor-General may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

IV. Union of South Africa

NOTE. The following Royal Proclamations have been issued and published in the Union Gazette since the commencement of the war: August 5, 1914, Gazette, August 7, 1914 (since revoked); August 12, 1914, Gazette, September 22, 1914 (since revoked); September 9, 1914, Gazette, September 22, 1914; October 8, 1914, Gazette, October 23, 1914; November 5, 1914, Gazette, December 11, 1914; February 16, 1915, Gazette, March 26, 1915; January 7, 1915, Gazette, May 28, 1915; June 25, 1915, Gazette, August 6, 1915; September 14, 1915, Gazette, October 22, 1915; November 10, 1915, Gazette, November 19, 1915; October 16, 1915, Gazette, November 26, 1915. A proclamation was also issued by the Governor-General on May 19, 1915, Gazette, May 28, 1915.

By Proclamation No. 112 of 1916, July 18, 1916, the provisions of the Act reprinted below were adapted to the Statutory List. A consolidated Statutory List was issued under Proclamation No. 137 of 1917, Gazette, August 3, 1917.

TRADING WITH THE ENEMY ACT, 1916

ACT NO. 39 OF 1916

ACT TO PROVIDE FOR THE IMPOSITION OF PENALTIES FOR TRADING WITH THE ENEMY, FOR THE BETTER CONTROL OF THE PROPERTY AND OTHER ASSETS OF ENEMIES AND PERSONS OF ENEMY NATIONALITY IN THE UNION, TO PROVIDE FOR RESTRICTIONS RELATING TO TRADING BY PERSONS IN THE UNION OF ENEMY NATIONALITY OR OF ENEMY ASSOCIATION, AND FOR OTHER PURPOSES CONNECTED WITH ASSETS, PROPERTY, DUTIES AND RIGHTS OF SUCH PERSONS

(Assented to 10th June, 1916)
(Signed by the Governor-General in English)
(Date of commencement—22d June, 1916)

1. (1) Any person who, during the present war, trades, or has, since the commencement thereof, traded with the enemy, within the meaning of this Act, shall be guilty of an offence, and shall—

(a) if convicted by a magistrate's court, be liable to imprisonment for a period not exceeding six months, or in the discretion of the court to a fine not exceeding fifty pounds, or to both such imprisonment and such fine, and, in default of payment of any such fine, to a further period of imprisonment not exceeding six months; or

(b) if convicted before a superior court, be liable to imprisonment for a period not exceeding three years or to a fine not exceeding five hundred pounds, or to both such imprisonment and such fine, and in default of payment of any such fine to a further period of imprisonment not exceeding three years;

and any such court before which the offender is convicted may order that any goods or money or securities for money, in respect of which the offence has been committed, shall be forfeited to the Crown. Upon the authority of any such order, any police officer of commissioned rank may enter upon any premises at any hour, by day or by night, and seize any goods or money or securities for money, the subject of the order.

(2) For the purposes of this Act a person shall be deemed to have traded with the enemy—

(a) if he has taken part in any transaction or performed any act which was at the date thereof prohibited by or under any proclamation of His Majesty or of the Governor-General, relating to trading with the enemy and published in the *Gazette* (whether the publication of such proclamation was before or after the commencement of this Act); or

(b) if he has attempted, or directly or indirectly has offered or proposed or agreed, to take part in any such a transaction or to perform such an act; or

(c) if without lawful authority (the proof whereof shall lie upon him) he has in any manner in the Union aided or abetted any other person outside the Union in entering into, negotiating or completing any transaction or in doing any act which, if effected or done within the Union, would have constituted an offence of trading with the enemy; or

(d) if without lawful authority (the proof whereof shall lie upon him) he has dealt or attempted or offered, proposed or agreed, whether directly or indirectly, to deal with any money or security for money or other property or assets in his hands or over which he has any claim or control for the purpose of enabling an enemy to obtain money or property or assets or credit thereon: or

(e) if he has taken part in any transaction or performed any act which, in accordance with the English or the Roman-Dutch

Common Law or by this Act or by any other law, constitutes trading with the enemy:

Provided that any transaction or act permitted by or under any proclamation referred to in this Act shall not be deemed to be trading with the enemy.

(3) Where a company has entered into a transaction or has done any act which is an offence under this section, every director, manager, secretary, or other officer of the company who is to his knowledge a party to the transaction or act shall also be deemed guilty of the offence, and whenever a firm or partnership has entered into such a transaction or done such an act, every member of the firm or partnership who is to his knowledge a party to the transaction or act shall also be deemed guilty of the offence.

(4) A prosecution for an offence under this section shall not be instituted except by, or with the consent of, the Attorney-General or Solicitor-General who is by law entitled to prosecute the offence, after information or complaint as to the offence has been lodged by the Treasury: Provided that the person charged with such an offence may be arrested and a warrant for his arrest may be issued and executed, and such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General or Solicitor-General aforesaid to the institution of the prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

(5) Where a transaction or an act constitutes an offence both under this Act and under any other law, or both under this Act and at common law, the offender shall be liable to be prosecuted and punished under either this Act or such other law, or under this Act or at common law, but shall not be liable to be punished twice for the same offence.

2. (1) Every enemy subject and every firm or partnership of which any partner is an enemy subject and every company of which any shareholder or debenture-holder is an enemy subject, carrying on business in the Union, and every person carrying on business on behalf of such person, firm, partnership or company, and every agent in the Union of a like person, firm, partnership or company carrying on business outside the Union shall, within one month after the commencement of this Act, send written notice to the Treasury of the fact that he or it is so carrying on business, and shall furnish with the notice or thereafter such information relating to such business as the Treasury may require.

Any enemy subject carrying on business in the Union who, and any person, firm, partnership or company knowing or having reasonable grounds for believing that he or it has an enemy subject as partner, shareholder, debenture-holder or principal, who or which makes default in complying with any requirement of this section with which it is his or its duty to comply shall be guilty of an offence and liable on conviction to a fine not exceeding five pounds for every day during which the default continues.

(2) Where the Treasury has reason to believe that the business carried on in the Union by any person, firm, partnership or company is, by reason of the enemy nationality or enemy association of that person, firm, partnership or company, or of the members of that firm, partnership or company or any of them, or otherwise, carried on wholly or mainly for the benefit of or under the control of enemy subjects, the Treasury shall, unless for any reason it appears to it inexpedient to do so, make an order either—

(a) prohibiting the person, firm, partnership or company from carrying on the business except for the purposes and subject to the conditions (if any) specified in the order; or

(b) requiring the business to be wound up.

The Treasury may at any time revoke or vary any such order, and may, in any case where it has made an order prohibiting or limiting the carrying on of the business, at any time, if it thinks it expedient, substitute for that order an order requiring the business to be wound up.

Any order made, varied or substituted by the Treasury under this subsection shall be subject to appeal to the court on the question of fact whether or not the business was carried on wholly or mainly for the benefit of or under the control of enemy subjects: Provided that notice of such appeal shall be lodged with the Treasury and with the court within three days, and shall be set down for argument within one week after the order has been served on the person, firm, partnership or company. No further appeal shall lie from the decision of the court.

(3) Where the Treasury makes any such order it may, notwithstanding the lodging of an appeal to the court, at the same time or at any time subsequently, appoint a controller to control and supervise the carrying out of the order, and in any case where it appears expedient to the Treasury, the Treasury may, as occasion requires, confer on the controller in any part of the Union such powers as are by Act No. 31 of 1909 of the Transvaal exercisable by a liquidator in a voluntary winding-up of a company (except that the liquidator shall not without the sanction of the court sell or transfer any of the immovable property of the person, firm, partnership or company, or raise money on the security of the assets thereof) or those powers subject to such modifications, restrictions, or extensions as the Treasury, or, where the sanction of the court is necessary,

as the court thinks necessary or convenient for the purpose of giving full effect to the order, and the remuneration of and the costs, charges and other expenses incurred by the controller, and any remuneration payable, and costs, charges and expenses incurred in connection with the supervision or inspection of the business, whether before or after the commencement of this Act, to such amount as may be approved by the Treasury, shall be defrayed out of the assets of the business, and shall be charged on such assets in priority to any other charges thereon.

(4) The distribution of any sums resulting from the realization of any assets of the business, whether those assets are realised as the result of an order requiring the business to be wound up or as the result of an order prohibiting or limiting the carrying on of the business, shall throughout the Union be subject to such rules as to preferential payments as are applicable in the Transvaal, under Act No. 31 of 1909 of the Transvaal, to the distribution of the assets of a company which is being wound up under that Act; and any balance, after providing for the discharge of liabilities, shall be distributed amongst the persons interested therein in such manner as the Treasury may direct:

Provided that any sums which, if a state of war had not existed, would have been payable or transferable under this section to enemies, whether as creditors or otherwise, shall be paid to the custodian of enemy property (appointed as hereinafter provided), to be dealt with by him in like manner as other moneys paid to him under this Act.

(5) Where there are assets of the business in enemy territory, the controller shall cause an estimate to be prepared of the value of those assets and also of the liabilities of the business to creditors, whether secured or unsecured, in enemy territory, and of the claims of persons in enemy territory to participate in the distribution of any balance available for distribution, and such liabilities and claims shall, for the purposes of this section, be deemed to have been satisfied out of such assets so far as they are capable of bearing them, and the balance (if any) of such liabilities and claims shall alone rank for payment out of the other assets of the business. A certificate by the controller as to the amount of such assets, liabilities, claims and balance, shall be conclusive for the purpose of determining the sums available for discharging the other liabilities and for distribution amongst other persons claiming to be interested in the business:

Provided that nothing in this subsection contained shall be construed as affecting the rights of creditors of and other persons interested in the business against the assets of the business in enemy territory.

(6) The Treasury may, on application for the purpose being made

by a controller appointed under this section, after considering the application and any objection which may be made by any person who appears to it to be interested, grant him a release, and an order of the Treasury releasing the controller shall discharge him from all liability in respect of any act done or default made by him in the exercise and performance of his powers and duties as controller, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(7) If any person contravenes the provisions of any order made under this section he shall be guilty of an offence and liable, on conviction, to the same penalties as are prescribed by this Act for the offence of trading with the enemy, and section *one* of this Act shall apply accordingly.

(8) Where an order under this section has been made as respects the business carried on by any person, firm, partnership or company, no proceedings for sequestration of the estate of such person, firm or partnership under the law governing insolvent estates, and no petition for the winding up of such company, under any law relating to companies, shall be taken or presented, or any resolution for the winding up of such company passed, or steps for the enforcement of the rights of any creditors of the person, firm or company taken without the consent of the Treasury, but the Treasury may present a petition for the winding up of the company by the court, and the making of an order under this section shall be a ground on which the company may be wound up by the court.

(9) The Treasury shall from time to time prepare and lay before Parliament lists of the persons, firms, partnerships and companies as to whom orders have been made under this section, together with short particulars of such orders, and notice of the making of an order under this section prohibiting or limiting the carrying on of any business, or requiring any business to be wound up, shall be published in the *Gazette.*

(10) Where a person, being a subject of His Majesty or of any State allied to His Majesty, is detained in enemy territory against his will, that person for the purposes of this section shall not be treated as an enemy or as being in enemy territory.

(11) An order made under this section shall continue in force, notwithstanding the termination of the present war, until such time as it may be determined by Order of His Majesty in Council or by proclamation of the Governor-General in the *Gazette.*

3. (1) Whenever the Treasury is satisfied on information on oath that there is reasonable ground for believing that an offence under this Act has been, is being, or is about to be committed by any person, firm, partnership or company, it may authorize any practising accountant or any

officer in the public service to inspect all books or documents belonging to or under the control of that person, firm, partnership or company, and to require any person able to give any information with respect to the business or trade of that person, firm, partnership or company to give that information, and, also, if accompanied by a member of a police force, to enter and search any premises used in connection with the business or trade, and to seize any such books or documents as aforesaid: Provided that when it appears to the Treasury that the case is one of great emergency and that in the interests of the State immediate action is necessary, the Treasury may cause the powers of entry, search, inspection, and seizure conferred by this subsection to be exercised without a strict compliance with the provisions thereof.

(2) Where it appears to the Treasury—

(a) in the case of a firm or partnership, that one of the partners was immediately before or at any time since the commencement of the present war an enemy subject or resident or carrying on business in enemy territory; or

(b) in the case of a company, that one-third or more of the issued share capital or debentures or debenture-stock or of the directorate of the company immediately before, or at any time since, the commencement of the present war was held by or on behalf of or consisted of persons who were enemy subjects or resident or carrying on business in enemy territory; or

(c) in the case of a person, firm, partnership or company, that the person, firm, partnership or company was or is acting as agent for any person, firm or company resident or carrying on business in enemy territory,

the Treasury may, if it thinks it expedient for the purpose of satisfying itself that the person, firm, partnership or company is not trading with the enemy, give, by written order, to a person appointed by it, authority to inspect all books and documents belonging to or under the control of the person, firm, partnership or company, and require any person able to give information with respect to the business or trade of that person, firm, partnership or company, to give that information.

For the purposes of this subsection, any person authorized in that behalf by the Treasury may inspect the register of members or debenture or debenture-stock holders of a company at any time, and any shares in or debentures of a company for which share or debenture warrants to bearer have been issued shall not be reckoned as part of the issued share or debenture capital of the company.

(3) If any person, having the custody of any book or document which a

person is authorized to inspect under this section, refuses or wilfully neglects to produce it for inspection, or if any person, who is able to give any information which may be required to be given under this section, refuses or wilfully neglects, when required, to give that information, that person shall, on conviction, be liable to imprisonment for a period not exceeding six months or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine, and in default of payment of any such fine, to a further period of imprisonment not exceeding six months.

(4) Where, on the report of an inspector appointed under this section to inspect the books and documents of a person, firm, partnership or company, it appears to the Treasury that it is expedient that the business should be subject to frequent inspection the Treasury may appoint that inspector or some other person to inspect and supervise the business, and any remuneration payable and expenses incurred, whether for the original inspection or the subsequent supervision, to such amount as may be fixed by the Treasury, shall be paid by the said person, firm, partnership, or company, where such person, firm, partnership or company is found guilty of an offence against this Act.

(5) Where a person has given any information to a person appointed to inspect the books and documents of a person, firm, partnership, or company under this section, the information (other than verbal information) so given may be used in evidence against him in any proceedings relating to an offence of trading with the enemy, notwithstanding that he only gave the information on being required to do so by the inspector, in pursuance of the inspector's powers under this section. But nothing in this subsection shall prevent any admission voluntarily made by such person being used in evidence against him.

4. (1) The Governor-General shall appoint a person to act as custodian of enemy property (in this Act referred to as "the Custodian") for the purpose of receiving, holding, preserving, and dealing with such property as may be paid to or vested in him in pursuance of this Act. The Custodian shall have such powers and duties with respect to the property aforesaid as may be prescribed by regulations which the Governor-General is hereby authorized to make, provided that no such regulation shall be inconsistent with any provision of this Act.

(2) The Custodian may place on deposit with any bank, or invest in any securities, approved by the Treasury, any moneys paid to him under this Act, or received by him from property vested in him under this Act, and any interest or dividends received on account of such deposits or investments shall be dealt with in such manner as the Treasury may direct.

5. (1) Whenever it appears to the Treasury—

(a) that an offence under this Act has been or is likely to be committed in connection with the trade or business of any person, firm, partnership or company or in relation to the property of any enemy or enemy subject; or

(b) That the control or management of the trade or business of any person, firm, partnership or company has been or is likely to be so affected by the state of war as to prejudice its effective continuance, and that it is in the public interest that the trade or business should continue to be carried on; or

(c) that for any reason whatever it is expedient in the public interest that owing to circumstances or considerations arising out of the present war, a controller of any such trade or business should be appointed, or in the case of an enemy or enemy subject, that the custody and control of his property should be vested in some other person,

the Treasury may apply to the court—

(i) in the case of a trade or business, for an order appointing a controller thereof; or

(ii) in the case of an enemy or enemy subject, for an order vesting the custody and control of his property in the Custodian,

and the court may make such order on the application as it thinks fit.

In the case of an application under paragraph (i) the court may limit the duration of the order, impose conditions and confer powers on the person appointed controller, and may then or at any time thereafter, confer upon him the powers of a receiver or manager or those powers subject to such modifications, restrictions or extensions as the court thinks fit (including, if the court thinks it necessary or expedient, for enabling the controller to borrow money, power, after a special application to the court for that purpose, to create charges on the property of the person, firm, partnership or company in priority to existing charges).

In the case of an application under paragraph (ii) the order, if made, shall be that the custody and control of the property be vested in the Custodian, with power on special order made at any time by the court on application made thereto by the Treasury, of selling, managing or otherwise dealing with the property as the court may determine, and in such case the court may give to the Custodian such special directions as to the sale, management or dealing with the property as in the circumstances it may think fit including directions, in the case of a sale, as to the application of the proceeds of sale or as to the investment of those proceeds.

(2) The court may direct how and by whom the costs of any proceedings under this section or the remuneration charges and expenses of any con-

troller or of the Custodian shall be borne, may fix the amount thereof and may, if it thinks fit, direct that the whole or any portion of such amount shall be charged upon the assets of the business or upon the property (as the case may be) in such order of priority in relation to existing charges thereon, as it thinks fit.

6. (1) Any sum which, if a state of war had not existed, would have been payable and paid to or for the benefit of an enemy, by way of rent, dividends, interest, share of profits, payments off of securities which have become repayable, or proceeds of the sale of goods held for sale on consignment, shall be paid by the person, firm, partnership, company, public body or Government department by whom or by which it would have been payable, to the Custodian to hold subject to the provisions of this Act, and the payment shall be accompanied by such particulars as the Custodian may require.

Any payment required to be made under this subsection to the Custodian shall be made—

(a) within one month after the commencement of this Act, or within such extended period as the Treasury may allow if the sum, had a state of war not existed, would have been paid before such commencement; and

(b) in any other case, within fourteen days after it would have been paid, or within such extended period as the Treasury may allow:

Provided that in the case of any company incorporated in any part of the Union which has established a board, local committee or local agency in the United Kingdom, the payment prior to the commencement of this Act by or under the authority of such board, local committee or local agency of any sums to which this section applies under the licence of a Secretary of State or the Board of Trade for the United Kingdom or to the custodian of enemy property for any part of the United Kingdom pursuant to any Acts of the Parliament of that Kingdom relating to trading with the enemy, and the payment of any such sums hereafter by or under the authority of such board, local committee or local agency to that custodian made pursuant to such Acts shall, for all legal purposes and in all legal proceedings in the Union, be deemed to have been or to be lawful and valid payments and to constitute sufficient compliance by such company with this subsection; and the company making such payment shall be perpetually held indemnified accordingly against any action or other legal proceeding whatsoever in the Union brought by any person: Provided further that, as regards coupons for payment of dividends or interest in respect of share warrants or debentures to bearer payable in the United Kingdom, where any such board or local committee or local agency in good faith believes that such coupons were or are presented for or on behalf of an enemy, payment of such coupons to the custodian of enemy property for any part of the United Kingdom shall, for all legal purposes and in all legal proceedings in the Union, be deemed to have been or to be lawful and valid payment and to constitute sufficient compliance by such company with this subsection and such company shall be held perpetually indemnified in manner and to the extent aforesaid.

(2) Whenever, before the commencement of this Act, any such sum has been paid into any account with a bank, or has been paid to any other person in trust for an enemy the person, firm, partnership, or company by whom or by which the payment was made shall, within one month after such commencement, by notice in writing, require the bank or person to pay the sum over to the Custodian to hold as aforesaid, and shall furnish the Custodian with such particulars as aforesaid. The bank or other person shall, unless such sum was already re-invested prior to the commencement of this Act, within one week after the receipt of the notice, comply with the requirement and shall be exempt from all liability for having done so.

(3) If any person neglects to make or require the making of any payment or to furnish the prescribed particulars within the time mentioned in this section, he shall, on conviction, be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment, and, in addition, to a further fine not exceeding fifty pounds for every day during which the default continues, and in default of payment of any such fine to a further period of imprisonment not exceeding six months; and every director, manager, secretary or officer of a company or any other person who is knowingly a party to the default shall, on the like conviction, be liable to the like penalties.

(4) For the purposes of this Act the expression "dividends, interest or share of profits," means any dividends, bonus or interest in respect of any shares, stock, debentures, debenture stock or other obligations of any company, public body or government department, any interest in respect of any loan and any profits or share of profits of any business, and, where a person is carrying on any business on behalf of an enemy, any sum which, had a state of war not existed, would have been transmissible by a person to the enemy by way of profits from that business shall be deemed to be a sum which would have been payable and paid to that enemy.

7. (1) Any person who holds or manages or has since the commencement of the present war held or managed for or on behalf of an enemy any property movable or immovable (including any rights, whether vested or contingent, in or arising out of property, movable or immovable, any

balances and deposits standing to the credit of an enemy at any bank) or who is indebted to an enemy in an amount of fifty pounds or more shall, within one month after the commencement of this Act, or, if the property comes into his possession or under his control or the debt becomes due after such commencement, then within one month after the time when it comes into his possession or under his control, or the debt becomes due by notice in writing communicate the fact to the Custodian and shall furnish the Custodian with such particulars in relation thereto as the Custodian may require, and if any person fails so to do, he shall, on conviction, be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months, or to both such a fine and imprisonment, and, in addition, to a further fine not exceeding five pounds for every day during which the default continues, and in default of payment of any such fine, to a further period of imprisonment not exceeding six months.

(2) Every company incorporated or registered in the Union, and every company which, though not incorporated or registered in the Union, has therein a share transfer or share registration office, shall, within one month after the commencement of this Act, by notice in writing, communicate to the Custodian full particulars of all shares, stock, debentures, and debenture stock and other obligations of the company which are held by or for the benefit of an enemy; and every member of any firm or partnership, one or more of whom, on the commencement of the war, became enemies or to whom money had been lent for the purpose of the business of the firm or partnership by a person who so became an enemy shall, within one month after the commencement of this Act, by notice in writing, communicate to the Custodian full particulars as to any share of profits and interest due to such enemy and, if any company or member of a firm or partnership fails to comply with the provisions of this subsection, the company shall, on conviction, be liable to a fine not exceeding fifty pounds, and, in addition, to a further fine not exceeding five pounds for every day during which the default continues, and every director, manager, secretary or officer of the company and every member of the firm or partnership who is knowingly a party to the default shall, on the like conviction, be liable to the like fine, or to imprisonment for a period not exceeding six months, or to both such imprisonment and fine, and in default of payment of any such fine to a further period of imprisonment not exceeding six months.

(3) Where the Custodian is satisfied from returns made to him that any securities are held by any person on behalf of an enemy, the Custodian may give notice thereof to the person, firm, company, local body or gov-

ernment department by or through whom any dividends, interest or bonus in respect of the securities or any sums by way of payment off of the securities are payable, and upon the receipt of such notice any dividends, interest or bonus payable in respect of, and any sums by way of payment off of, the securities to which the notice relates shall, unless such moneys were already re-invested prior to the commencement of this Act, be paid to the Custodian in like manner as if the securities were held by an enemy.

For the purpose of this subsection "securities" includes stock, shares, annuities, bonds, debentures or debenture stock or other obligations.

(4) The Custodian shall keep a register of all property, returns whereof have been made to him under this Act.

8. (1) The court or a judge thereof may, on the application of any person who appears to the court or judge to be a creditor of an enemy or entitled to recover damages against an enemy or to be interested in any property, movable or immovable (including any rights, whether vested or contingent, in or arising out of property movable or immovable), belonging to or held or managed for or on behalf of an enemy or on the application of the Treasury or any other Government Department, by order vest in the Custodian the custody and control of any such property as aforesaid if the court or the judge is satisfied that such vesting is expedient for the purposes of this Act, and may, by the order, confer on the Custodian such powers of selling, managing, and otherwise dealing with the property as to the court or judge may seem proper.

(2) The court or judge before making any order under this section may direct that such notices (if any), whether by way of advertisement or otherwise, shall be given as the court or judge may think fit.

(3) Where on the hearing of an application under this section in respect of any shares, debentures or debenture stock of or in a company registered in the Union it appears to the court or judge that an application in respect of the same property is pending before any court or judge in the United Kingdom under any Act of the Parliament of that Kingdom relating to trading with the enemy, the court or judge shall stay further proceedings until the determination of such last mentioned application is known.

(4) When a vesting order has been or is made in the United Kingdom under any such Act as is mentioned in subsection (3) in respect of any shares, debentures or debenture stock of or in any company registered in the Union, no order shall be made under this section in respect of the same shares, debentures or debenture stock.

(5) In the case of any company incorporated in any part of the Union which has established a branch register or a duplicate of its register in

the United Kingdom, such company may give effect to any order which has been or may be made by a court or the Board of Trade in the United Kingdom in pursuance of any Acts of the Parliament of the United Kingdom relating to trading with the enemy, with regard to shares, stock or securities of any such company, and may register any transfer thereof made in obedience to such order.

(6) Any company acting in pursuance of any order granted under subsection (1) of this section or recognising any order referred to in subsection (5) of this section in the manner provided in that subsection, or acting in pursuance of an order granted under section *five*, shall be held perpetually indemnified from all liability to any person whatsoever claiming to have any right, title or interest in respect of any property the subject of such order; and it shall not be necessary for such company to enquire into or to be concerned with the propriety of any such order, or to enquire whether the court or the Board of Trade in the United Kingdom, had jurisdiction or power to make the same.

(7) Whenever under any order mentioned or referred to in subsection (6) there is a sale of shares or stock forming part of the capital of any company, such company may, with the consent of the Treasury, purchase such shares or stock or any of them, notwithstanding anything to the contrary contained in any law or any article of association or regulation of the company; and any shares or stock so purchased by the company may, from time to time, be re-issued by it.

9. (1) The Custodian shall, except so far as the court or a judge thereof may otherwise direct, and subject to the provisions of subsection (2) of this section, hold any money paid to and any property the custody and control whereof is vested in him under this Act until the termination of the present war, and shall thereafter deal with the same in such manner as His Majesty may by Order-in-Council direct.

(2) The property held by the Custodian under this Act shall not be liable to be attached or otherwise taken in execution, but the Custodian may, if so authorized by an order of the court or a judge thereof or if for the benefit of the owner of the property or any of his dependents by the Treasury, pay out of the property paid to him in respect of any person the whole or any part of the property specified in the order:

Provided that before making any such payment the Custodian shall take into consideration the sufficiency of the property paid to or the custody and control whereof is vested in him in respect of the person in question, to satisfy any other claims against that person of which notice, verified by solemn declaration, may have been served upon him.

(3) The Custodian may further, though not authorized by an order of

court pay out of the moneys held by him on behalf of an enemy or enemy subject the premiums due from time to time upon any policy of life or endowment insurance which has been effected prior to the commencement of the present war by or in favour of that enemy or enemy subject with any insurance company or association (other than an enemy or enemy subject) having its head office or a branch office or agency in the Union.

(4) The receipt of the Custodian or any person duly authorized to sign receipts on his behalf for any sum paid to him under this Act shall be a good discharge to the person paying the same as against the person or body of persons in respect of whom the sum was paid to the Custodian.

(5) The Custodian shall keep a register of all property held by him under this Act.

10. (1) If, during the present war, any policy of life or endowment insurance effected by or in favour of an enemy or enemy subject prior to the commencement of the war has become void by reason of the failure on the part of the person liable to pay premiums under the policy, to pay them at or within the time prescribed thereby, the Custodian may pay out of the moneys held by him on behalf of the enemy or enemy subject such sums as would under the policy be payable in order to revive it.

(2) A policy of life or endowment insurance effected prior to the commencement of the present war by or in favour of an enemy or enemy subject shall not be avoided merely by the existence of a state of war.

(3) All moneys which would, if a state of war had not existed, have been paid under any policy of life or endowment insurance in favour of any enemy whatever or in favour of any enemy subject in respect of whose property an order has been made under section *five* shall be paid to the Custodian and held by him till such time as under this Act, other moneys of such enemy or enemy subject are held.

11. It shall be the duty of every enemy subject who is within the Union, if so required by the Custodian, within one month after being so required, to furnish the Custodian with such particulars as to—

(a) any stocks, shares, debentures, or other securities issued by any company, government, municipal or other authority held by him or in which he is interested; and

(b) any other property of the value of fifty pounds or upwards belonging to him or in which he is pecuniarily interested,

as the Custodian may require, and if he fails to do so he shall, on conviction, be liable to a fine not exceeding fifty pounds, or to imprisonment with or without hard labour for a period not exceeding six months, or to both such fine and imprisonment, and in addition to a further fine not exceeding five pounds for every day during which the default continues.

12. (1) No person shall by virtue of any assignment of any debt or delivery of any coupon or other security transferable by delivery, or transfer of any other obligation, made or to be made in his favour by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights or remedies against the persons liable to pay, discharge or satisfy the debt, security or obligation, unless he proves that the assignment, delivery, or transfer was made by leave of the Treasury or was made before the commencement of the present war, and any person who knowingly pays, discharges or satisfies any debt, to which this subsection applies, shall be deemed to be guilty of the offence of trading with the enemy and shall be liable on conviction to the punishment prescribed therefor by this Act:

Provided that this subsection shall not apply where the person to whom the assignment, delivery or transfer was made, or some person deriving title under him, proves that the transfer, delivery or assignment or some subsequent transfer, delivery or assignment, was made before the commencement of this Act in good faith and for valuable consideration, nor shall this subsection apply to any bill of exchange or promissory note.

(2) No person shall, by virtue of any transfer of a bill of exchange or promissory note made or to be made in his favour by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights or remedies against any party to the instrument unless he proves that the transfer was made before the commencement of the present war, and any party to the instrument who knowingly discharges the instrument shall be deemed to be guilty of trading with the enemy and shall be liable on conviction to the punishment prescribed therefor by this Act:

Provided that this subsection shall not apply where the transferee, or some subsequent holder of the instrument, proves that the transfer, or some subsequent transfer, of the instrument was made before the commencement of this Act in good faith and for valuable consideration.

(3) Nothing in this section shall be construed as validating any assignment, delivery or transfer which would be invalid apart from this section or as applying to securities within the meaning of section *fourteen* of this Act.

13. Where during the continuance of the present war any coupon or other security transferable by delivery is presented for payment to any company, municipal or local authority, or other body or person, and the company, body or person has reason to believe that it is so presented on behalf or for the benefit of an enemy or that, since the commencement of the present war, it has been held by or for the benefit of an enemy, the

company, body or person may pay the sum due in respect thereof to the Custodian, and such a payment shall for all purposes be a good discharge to the company, body or person. Such sum shall, subject to rules of court, be dealt with according to orders of the court.

14. (1) Except with the consent of the Treasury, no transfer made after the commencement of this Act by or on behalf of an enemy of any securities shall confer on the transferee any rights or remedies in respect thereof, and no company or municipal or local authority or other body by whom the securities were issued or are managed shall, except as hereinafter appears, take any cognizance of or otherwise act upon any notice of such a transfer.

(2) No entry shall hereafter, during the continuance of the present war, be made in any register or branch register or other book kept in the Union of any transfer of any securities therein registered, inscribed or standing in the name of an enemy, except by leave of the Treasury.

(3) No share warrants payable to bearer shall be issued during the continuance of the present war in respect of any shares or stock registered in the name of any enemy.

(4) If any company or municipal or local authority or other body contravenes the provisions of this section it shall be liable, on conviction, to a fine not exceeding fifty pounds, and every director, manager, secretary or other officer of the company, authority, or body who is knowingly a party to the contravention, shall be liable on the like conviction to a like fine or to imprisonment for a period not exceeding six months, and, in default of payment of the fine, to a further period of imprisonment not exceeding six months.

(5) For the purposes of this section the expression "securities" means any annuities, stock, shares, debentures, or debenture stock issued by or on behalf of the Government or by any municipal, local or other authority, or by any company or by any other body, which are registered or inscribed in any register, branch register, or other book kept in the Union.

(6) The provisions of this section shall not apply to any transfers of shares or securities or the issue of share-warrants of companies incorporated in any part of the Union made either pursuant to orders of a court of the United Kingdom under any Acts of the Parliament in the United Kingdom relating to trading with the enemy or by or with the approval of the Board of Trade in the United Kingdom or of any supervisor or controller of enemy banks or other officer appointed by His Majesty's Government in the United Kingdom.

15. (1) During the continuance of the present war a certificate of incorporation of a company shall not be given by any officer charged by

law with the duty of registering companies until there has been lodged with him either—

(a) a sworn declaration that the company is not formed for the purpose or with the intention of acquiring the whole or any part of the undertaking of a person, firm, partnership or company of enemy nationality or enemy association; or

(b) a licence from the Treasury authorizing the acquisition by the company of such an undertaking.

(2) Where such a declaration has been lodged, it shall not be lawful for the company, during the continuance of the present war, without the licence of the Treasury, to acquire the whole or any part of any such undertaking, and if it does so the company shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding fifty pounds, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall, on the like conviction, be liable to the like fine or to imprisonment for a period not exceeding six months, and in default of payment of any such fine to a further period of imprisonment not exceeding six months.

(3) Where on an application for the registration of a company it appears to the officer who would otherwise be charged by law with the duty of registering a company that any subscriber of the memorandum of association or any proposed director of the company is an enemy subject he shall inform the Treasury, and, if so instructed by the Treasury, refuse to register that company.

(4) No allotment or transfer of any share, stock, debenture, or other security issued by a company made after the commencement of this Act to or for the benefit of an enemy subject shall, unless made with the consent of the Treasury, confer on the allottee or transferee any rights or remedies in respect thereof, and the company by which the security was issued shall not take any cognizance of or otherwise act upon any notice of any such transfer except by leave of the court or of the Treasury.

If any company contravenes the provisions of this subsection the company shall be liable on conviction to a fine not exceeding fifty pounds, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall be liable on conviction to a fine of a like amount or to imprisonment for a term not exceeding six months.

16. Where the Treasury certifies that it appears to it that a company registered in the Union is carrying on business, either directly or through an agent, branch or subsidiary company, outside the Union, and that in carrying on such business it has entered into or done acts which if entered

into or done in the Union would constitute the offence of trading with the enemy, the Treasury may present a petition for the winding-up of the company by the court, and the issue of such a certificate shall be a ground on which the company may be wound up by the court, and the certificate shall, for the purposes of the petition, be evidence of the facts therein stated.

17. (1) If the benefit of an application made by or on behalf or for the benefit of an enemy or enemy subject for any letters patent is, by an order under this Act, vested in the Custodian, the patent may be granted to the Custodian as patentee and may, notwithstanding anything in the law relating to the grant of letters patent, be sealed accordingly by the Registrar of Patents.

(2) The Governor-General may direct that any patent or licence to use a patent, which has been granted to an enemy or enemy subject or the registration of any design or trade-mark the proprietor whereof is an enemy or enemy subject, shall be avoided or suspended or that any proceedings on an application by an enemy or enemy subject for a patent, design or trade-mark or for an extension of the time within which any act or thing may be done by an enemy or enemy subject in connection with any patent, design or trade-mark shall be avoided or suspended.

18. Any restrictions imposed by any law or proclamation on dealings with enemy property shall continue to apply to property, particulars whereof are or are liable to be notified to the Custodian in pursuance of section *seven* of this Act not only during the continuance of the present war, but thereafter until such time as they may be removed by Order of His Majesty in Council or by proclamation of the Governor-General in the *Gazette*. The Governor-General may issue proclamations removing all or any of those restrictions either simultaneously as respects all such property or at different times as respects different classes of property.

19. The Custodian may charge such fees in respect of his duties under this Act, whether by way of percentage or otherwise as the Treasury may fix, and such fees shall be collected and accounted for by such persons in such manner and shall be paid to such account as the Treasury direct, and the incidence of the fees as between capital and income shall be determined by the Custodian.

20. (1) The Governor-General may by proclamation in the *Gazette* prohibit all persons or bodies of persons, incorporated or unincorporated, resident, carrying on business, or being in the Union, from trading with any persons or bodies of persons not resident or carrying on business in enemy territory or in territory in the occupation of the enemy (other than persons or bodies of persons, incorporated or unincorporated, residing or

carrying on business solely within His Majesty's Dominions) wherever by reason of the enemy nationality or enemy association of such persons or bodies of persons, incorporated or unincorporated, it appears to him expedient so to do, and if any person acts in contravention of any such proclamation he shall be guilty of an offence and shall be liable on conviction to the penalties prescribed by section *one* of this Act for the offence of trading with the enemy, and the provisions of that section shall apply accordingly.

(2) Any list of persons and bodies of persons, incorporated or unincorporated, with whom or with which such trading is prohibited by a proclamation under this section may from time to time be varied or added to by like proclamation in the *Gazette.*

(3) The provisions of this Act shall, subject to such exceptions and adaptations (if any) as may be prescribed by proclamation of the Governor-General in the *Gazette*, apply in respect of such persons and bodies of persons as aforesaid as if, for references therein to trading with the enemy, there were substituted references to trading with such persons and bodies of persons as aforesaid, and for references to enemies there were substituted references to such persons and bodies of persons as aforesaid.

(4) For the purposes of this section a person shall be deemed to have traded with a person or body of persons to whom a proclamation issued under this section applies, if he enters into any transaction or does any act with, to, on behalf of, or for the benefit of, such a person or body of persons which, if entered into or done with, to, on behalf of, or for the benefit of an enemy, would be trading with the enemy.

21. Where in any proceedings under this Act any question arises—

(a) as to the existence of circumstances outside the Union; or

(b) as to the existence of any circumstances and considerations arising out of the present war,

a certificate under the hand of the Minister as to the existence of any such circumstances or considerations shall be evidence thereof.

22. The Chief Justice and judges of the Supreme Court may make rules as to the practice and procedure to be adopted for the purposes of those provisions of this Act in respect of which an order of the court is necessary.

23. In this Act, unless inconsistent with the context—

"commencement of the present war" means as respects any enemy, the date on which war was declared by His Majesty on the country in which that enemy resides or carries on business;

'enemy" means any person or body of persons in an enemy territory; and includes any person or body of persons outside the Union treated as an enemy under any proclamation relating to trading with the enemy for the time being in force which, having been issued by His Majesty or the Governor-General, is published in the *Gazette;*

"enemy subject" means a subject of a State for the time being at war with His Majesty and includes a body corporate constituted according to the laws of such a State;

"enemy territory" means any territory of a sovereign who is for the time being at war with His Majesty, other than territory in military occupation by any of His Majesty's forces or the forces of His Majesty's allies;

"imprisonment" means imprisonment with or without hard labour as the court which passes sentence may direct;

"Treasury" means the department of the Minister of Finance acting through the Minister thereof or any other Minister of State to whom the Governor-General may assign the ministerial responsibility for the administration of this Act;

"the court" means, in relation to assets or property, or a business, a provincial or local division of the Supreme Court having jurisdiction where such assets or property are situate or the business is being carried on.

24. Nothing in this Act contained shall be construed as limiting the power of His Majesty, or the Governor-General acting in his name and on his behalf, to prohibit by proclamation any transaction which is not prohibited by this Act, or by licence to permit any transaction which is so prohibited.

25. This Act may be cited for all purposes as the Trading with the Enemy Act, 1916.

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with the enemy.